

8th edition

How to Get a Green Card

by Ilona Bray, J.D., and
Loida Nicolas Lewis, J.D.





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Table of Contents

Your Immigration Companion

A. Types of Green Cards We Cover.....	2
B. How Much You Can Do Without a Lawyer	2
C. Using This Book.....	3

1 Immigration Then and Now

A. America's Earliest Settlers	6
B. Early Immigration Restrictions.....	7
C. Today's Immigration Laws	8
D. Looking Forward.....	10

2 All the Ways to Get a Green Card

A. Family-Based Relationships.....	12
B. Employment-Based Relationships.....	13
C. Special Immigrants.....	14
D. Entrepreneur Immigrants	14
E. Asylum and Refugee Status	14
F. Diversity Visa Lottery	15
G. Amnesties.....	15

3 Short-Term Alternatives to a Green Card

A. How Do Foreigners Enter the United States?.....	18
B. Types of Visas	18
C. Tourists Who Can Visit Without a Visa	21
D. The Importance of Staying Legal	22
E. How to Extend a Visitor Visa	23
F. Changing Your Reason for Staying.....	24
G. What to Do If Your Application Is Denied	24
H. Tips on Filling Out Form I-539.....	25

4 Will Inadmissibility Bar You From Getting a Green Card?

A. What Is Inadmissibility?	34
B. The Possibility of Waiving Inadmissibility.....	34
C. Reversing an Inadmissibility Finding.....	34
D. Most Troublesome Grounds of Inadmissibility	41

5	How Long You'll Have to Wait	
	A. Immediate Relatives of U.S. Citizens: No Waiting.....	51
	B. Relatives in Preference Categories: Longer Waits	51
	C. Dealing With the Wait.....	52
	D. Can You Predict How Long You'll Wait?.....	52
	E. Revocation of a Petition or Application	57
6	Fiancé and Fiancée Visas	
	A. Who Qualifies for a Fiancé Visa.....	60
	B. Quick View of the Fiancé Visa Application Process.....	61
	C. Detailed Instructions for the Fiancé Visa Application Process	62
	D. How to Bring Your Children on a Fiancé Visa.....	66
	E. Marriage and After	66
7	Green Cards Through Marriage	
	A. Who Qualifies.....	80
	B. Special Rules in Court Proceedings	81
	C. Quick View of the Marriage-Based Green Card Application Process	81
	D. Detailed Instructions for the Marriage-Based Green Card Application Process	84
	E. Bringing Your Children.....	89
	F. If Your Marriage Is Less Than Two Years Old.....	90
	G. If You Marry Again	92
	H. Common Questions About Marriage and Immigration	93
8	Your Parents as Immigrants	
	A. Who Qualifies to Petition for Their Parents.....	104
	B. Who Qualifies As Your Parent	105
	C. Quick View of the Application Process.....	107
	D. Detailed Instructions for the Application Process.....	107
9	Child Immigrants	
	A. Who Qualifies.....	112
	B. Definition of "Child"	113
	C. Quick View of the Application Process.....	116
	D. Detailed Instructions for the Application Process.....	116
	E. Automatic Citizenship for Some Children	119

10	Orphan Immigrants	
	A. Who Qualifies as an Orphan Child.....	132
	B. Who Can Petition for an Orphan Child.....	133
	C. Pre-Adoption Requirements.....	133
	D. Starting the Adoption Process.....	135
	E. After the Petition Is Approved.....	137
	F. Filing for a Visa.....	137
	G. Automatic Citizenship for Adopted Orphans.....	137
11	The Diversity Visa Lottery	
	A. Who Qualifies for the Lottery	143
	B. How to Apply for the Lottery.....	144
	C. After You Win—The Green Card Application.....	145
	D. How to Bring Your Spouse and Children	146
12	Amerasian Immigrants	
	A. Who Qualifies as an Amerasian	150
	B. Who Can Start the Process.....	150
	C. Who Will Serve as a Sponsor?	150
	D. How to File.....	151
	E. Where to File.....	152
13	Your Brothers and Sisters as Immigrants	
	A. Who Counts As Your Brother or Sister	158
	B. Quick View of the Application Process.....	159
	C. Detailed Instructions for the Application Process.....	159
	D. What Happens After Filing Form I-130	160
14	Refugees and Political Asylees	
	A. Who Qualifies.....	167
	B. Who Is Barred From Qualifying.....	168
	C. How to Apply for Refugee Status	169
	D. How to Apply for Political Asylum	170
	E. If Your Asylum Application Is Denied.....	174
	F. Asylees Can Bring Overseas Spouses and Children to the United States.....	175
	G. Getting a Green Card After Asylum Approval.....	176
	H. Revocation of Asylee Status	176

I. Temporary Protected Status (TPS).....	177
J. Deferred Enforced Departure (DED).....	179

15 **Military Veterans and Enlistees**

A. Who Qualifies to Apply for Citizenship Without a Green Card.....	196
B. Who Qualifies for Permanent Residence	197

16 **Registry: For Those in the U.S. Since 1972**

A. How You Got Here Is Irrelevant	206
B. Short Absences Allowed	206
C. How to File.....	206
D. Additional Documentation Required.....	206
E. Approval of Registry	207

17 **Cancellation of Removal: Do Ten Illegal Years Equal One Green Card?**

A. Applying in Court Proceedings	210
B. Who Qualifies for Cancellation	210
C. Who Is Not Eligible for Cancellation.....	210
D. Preparing a Convincing Case	211
E. How to File.....	214
F. Approving Your Application.....	215
G. Additional Forms of Cancellation of Removal	215

18 **Adjustment of Status**

A. Who Is Allowed to Use the Adjustment of Status Procedure.....	219
B. People Who Can't Adjust Status at All.....	222
C. How to File.....	222
D. After You Apply.....	227
E. Interview and Approval	227

19 **Consular Processing**

A. How Your Case Gets to the Consulate	238
B. Forms and Documents You'll Need to Provide	239
C. Attending Your Visa Interview.....	241
D. Approval of Your Immigrant Visa	243
E. Arriving in the United States	244

20	Private Bills	
	A. What Is a Private Bill?	266
	B. How a Private Bill Is Passed	266
21	Acquiring Citizenship Through U.S. Citizen Parents	
	A. Who Qualifies for Acquisition of Citizenship	268
	B. Obtaining Proof of U.S. Citizenship	270
	C. Dual Citizenship	271
22	Filling Out and Submitting Immigration Applications	
	A. Don't Give False Answers	274
	B. Get the Latest Forms and Fee Amounts	274
	C. Tips for Filling Out Forms	275
	D. When Additional Proof Is Required	276
	E. Submitting Photographs for Identification	279
	F. Fingerprinting Requirements	280
	G. Keep Your Own File	281
	H. Tips for Filing Applications	281
23	Tracking Your Application Through the System	
	A. Understanding the USCIS Culture	286
	B. Where to Go	287
	C. Inquiring About Delays	288
	D. Speeding Up Processing in Emergencies	290
	E. Reporting Wrongdoing	291
24	Keeping, Renewing, and Replacing Your Green Card	
	A. Renewing or Replacing Your Green Card	294
	B. When the Immigration Authorities Can Take Away Your Card	294
	C. Planning to Apply for U.S. Citizenship	297
25	How to Find and Work With a Lawyer	
	A. Where to Look for a Lawyer	306
	B. Deciding on a Particular Lawyer	307
	C. Paying the Lawyer	308
	D. Managing the Lawyer	308
	E. Firing a Lawyer	310

Sample Filled-In Forms

Sample Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document	26
Sample Form I-539, Application to Extend/Change Nonimmigrant Status.....	28
Sample Form I-129F, Petition for Alien Fiancé(e) (as used by an unmarried couple)	68
Sample Form I-134, Affidavit of Support	72
Sample Form DS-230, Application for Immigrant Visa and Alien Registration (as used by immigrating fiancé).....	74
Sample Form DS-156, Nonimmigrant Visa Application (as used by immigrating fiancé).....	76
Sample Form DS-156K, Nonimmigrant Fiancé(e) Visa Application	78
Sample Form I-130, Petition for Alien Relative (as used for an immigrating husband or wife).....	94
Sample Form I-129F, Petition for Alien Fiancé(e) (as used by a married couple)	96
Sample Form I-751, Petition to Remove Conditions on Residence	99
Sample Form G-325A, Biographic Information.....	101
Sample Form I-130, Petition for Alien Relative (as used for immigrating parents)	109
Sample Form I-130, Petition for Alien Relative (as used for immigrating children).....	120
Sample Form N-600, Application for Certificate of Citizenship	123
Sample Form I-600A, Application for Advance Processing of Orphan Petition.....	138
Sample Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant	153
Sample Form I-130, Petition for Alien Relative (as used for immigrating siblings of U.S. citizens)	162
Sample Form I-589, Application for Asylum and for Withholding of Removal.....	180
Sample Form I-730, Refugee/Asylee Relative Petition.....	192
Sample Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant	200
Sample Form I-485, Application to Register Permanent Resident or Adjust Status	231
Sample Form I-765, Application for Employment Authorization	235
Sample Form DS-2001, Notification of Applicant(s) Readiness.....	246

Sample Form DS-230 Part I, Application for Immigrant Visa and Alien Registration.....	248
Sample Form I-864, Affidavit of Support Under Section 213A of the Act	250
Sample Form I-864A, Contract Between Sponsor and Household Member	259
Sample Form DS-230 Part II, Application for Immigrant Visa and Alien Registration.....	262
Sample Form I-90, Application to Replace Permanent Resident Card	299
Sample Form I-131, Application for Travel Document.....	301

Index

Your Immigration Companion

A. Types of Green Cards We Cover	2
B. How Much You Can Do Without a Lawyer.....	2
C. Using This Book	3

Are you a foreign-born person who's interested in making your home in the United States? If so, this book may be just the ticket to finding out whether you're eligible for permanent U.S. residence, also known as a "green card." A green card gives you the right to live and work in the United States your whole life, travel in and out of the country without too much hassle, sponsor certain family members to join you, and, if all goes well for a few years, apply for U.S. citizenship.

This book will help you learn the application procedures, fill out the various forms, and pick up tips for dealing with often-difficult government officials. We try to give you a realistic view of your immigration possibilities and guide you along the path—which may be a long one—to reaching your goals. And unlike many government publications, we'll warn you about what could go wrong, and what steps to take to avoid delays and problems. Immigrants to the United States have to face a huge and often unfriendly government bureaucracy. Often it's not the law itself that gives immigrants problems, but dealing with government delays, mistakes, and inattention. So, it helps to have a friend like this book by your side.

However, some people won't get the help they need from this book, so read this chapter carefully before you continue!

A. Types of Green Cards We Cover

This book was designed to help the "average" person—for example, someone who doesn't have a million dollars to invest, isn't internationally famous, and hasn't received a job offer from a U.S. employer. That's why we've focused our discussion on the following types of green card opportunities:

- family-based green cards, available to close relatives and adopted children of U.S. citizens and permanent residents
- political asylum and refugee status, available to people fleeing certain types of persecution
- the visa lottery ("diversity visa"), available to people with a certain level of education who win a random drawing
- opportunities for people who have lived in the United States for ten years or more ("registry" and "cancellation of removal").

This book does *not* cover green cards through employment, investment, the amnesty programs of the 1980s and the followup "NACARA" program, religious workers, or other, more obscure categories. Nor does it cover temporary visas (distinct from green cards in that they expire, usually in a few years). Examples of temporary visas include student, business visitor, H-1B specialty worker, and J-1 exchange visitor visas. (For a quick overview of these temporary visas, see Chapter 3.)



CAUTION

Don't confuse green cards with U.S. citizenship. The highest status you can obtain under the U.S. immigration laws is citizenship. However, with only a very few exceptions, you must get a green card before you can apply for citizenship. For example, an immigrant who marries a U.S. citizen may gain the right to apply for a green card, but not yet to apply for U.S. citizenship.

B. How Much You Can Do Without a Lawyer

The advice given in this book is for simple, straightforward cases. In other words, it's for people who clearly meet the eligibility requirements laid out in this book and have the

education and skills to understand and handle the application requirements.

Many tasks you can do yourself, such as filling in forms, collecting documents, and attending interviews. Still, even filling out immigration forms can be a challenge. You'll be dealing with a bureaucracy that loves paperwork, but isn't always friendly to someone who makes minor mistakes or submits inconsistent information. Hiring an attorney—who handles this type of paperwork every day and knows who to call when things go wrong—can be well worth the expense, both for convenience and for your own peace of mind.

And if your case is more complex, you absolutely should hire a lawyer to advise or represent you. This may be the case if:

- you have been ordered to appear before an immigration judge for what are called “removal” proceedings because the immigration authorities do not believe that you have a legal reason to either enter or continue to stay in the United States
- you have a criminal record
- you have some other problems with your immigration paperwork, such as you have submitted forged documents, or
- the bureaucratic requirements are too technical; for example, you must apply for political asylum or labor certification, or you are appealing some decision made in your case by immigration authorities.

Of course, the key is to get a really good, experienced attorney. See Chapter 25 for guidance in hiring and working with a lawyer.

C. Using This Book

You need not read every chapter in this book—only those helpful to your specific situation. Here is some guidance.

Read **Chapter 1** if you're interested in a summary of immigration trends and laws throughout history.

Everyone should read **Chapters 2, 3, and 4**. They describe the basic requirements for obtaining legal permission to stay in the United States.

Everyone should also read **Chapter 5**. It explains the general forms and procedures required for obtaining a green card and the quotas that may apply (quotas allow set numbers of specific types of immigrants to come to the United States).



TIP

This book doesn't provide forms, for good reason. All the application forms you'll need—and we'll tell you exactly which ones they are—are either readily available (www.uscis.gov or 800-870-3676) or will be mailed to you by the immigration authorities when the time is right. Some can even be filled out online. We considered including copies in this book as well, but determined that because the forms get revised so frequently, this might actually be a disservice to our readers. It's best for you to obtain the most up-to-date form when you're ready to use it. We have, however, provided sample filled-in forms to illustrate our advice and show you what the form will look like.

Now you can choose and read the specific chapters that concern you. Look over the chapter headings for **Chapters 6 through 17**—and read the ones that make the most sense in your specific situation. For example, if you believe that you might qualify for a green card because you will be marrying or are already married to a U.S. citizen, read **Chapter 7**. It may refer you to other chapters you should read to get a more complete picture.

Each chapter contains samples of most of the forms you'll need to complete.

After reading about the various rules for specific types of immigrants, if you decide that you qualify to file for yourself or another person, read **Chapters 21 and 22**. These chapters will help you with filling out the necessary forms and getting them into the right hands.

If you lose your green card or need to renew or replace it, read **Chapter 23** to find out how to do so.

Some people will find that they don't qualify for U.S. immigration at all, or at least not yet—it's a complicated and narrow system. But the good news is that approximately one million people receive U.S. green cards every year.



CAUTION

Green cards come with certain limitations. It's not a completely secure status. For example, you can lose your right to your green card if you:

- commit a crime
- don't make your primary home in the United States
- forget to report your change of address to the immigration authorities
- involve yourself in terrorist or subversive activities, or
- otherwise violate the immigration laws.

Steps You Must Take to Keep Up to Date

This book was as up-to-date as we could make it on the day it was printed. However, immigration laws change frequently, and USCIS changes its fees, rules, forms, and procedures even more often—at times without telling anyone.

That's why you must take certain steps on your own to protect your rights and interests. In particular, be sure to do the following:

- Check the USCIS website before turning in any application. Go to the "Immigration Forms, Fees, and Fingerprints" section. Make sure the form you filled out is still the most up to date, and that the fee hasn't gone up.
- Check the updates to this book posted on the Nolo website at www.nolo.com. Also see whether we've published a later edition of this book, and read our analysis about who needs to get the new edition.
- Listen to the news, particularly for changes by the U.S. Congress. But don't rush to USCIS to apply for something until you're sure it's final. A lot of laws in progress get reported on before the president has actually signed them.

Immigration Then and Now

America: A Nation of Immigrants

A. America's Earliest Settlers.....	6
1. Forced Migration.....	6
2. European Exodus.....	6
3. Growth of the Continental U.S.....	6
B. Early Immigration Restrictions	7
C. Today's Immigration Laws.....	8
1. Preference for Skilled Workers	8
2. Refugees and Political Asylum	9
3. Undocumented Workers	9
4. Immigration Acts From 1990 to the Present	9
D. Looking Forward	10

To understand current immigration policy, it helps to know how it came about.

A. America's Earliest Settlers

Long before Cristobal Colon—the Spanish name by which Christopher Columbus referred to himself—opened the Americas to the Europeans in 1492, the first inhabitants of what is now the United States were the Native American Indians, including the Eskimos. Other early settlers included the Vikings, in the northernmost part of North America, and the ancestors of today's Hawaiians.

From the 15th century onward, the continent became a magnet for explorers and colonists from Spain, Holland, France, and England. In 1620, the pilgrims landed in Massachusetts—although they intended to land in Virginia—where they founded their new Zion, free from the interference of the English government. The Quakers settled in Pennsylvania. Maryland provided refuge for the Catholics persecuted in England.

Spanish Jews, who had settled in Brazil after being expelled from Spain, arrived in New York when the Portuguese took over the former Spanish colony and started the Brazilian inquisition. After the Scottish rebellion was crushed, people from Scotland left for the colonies.

Other immigrants came in groups and provided their special skills to the new cities and settlements: Austrians from Salzburg made silk; Poles and Germans made tar, glass, and tools, and built homes. Later, Italians came and raised grapes. New Jersey was settled by the Swedes; northern Pennsylvania attracted a large number of Germans.

1. Forced Migration

Not everyone who came to the New World did so of their own free will. Many crossed the ocean as indentured servants for landowners in the English colonies.

And as cotton became the most important product in the South, plantation owners turned to the inhuman trade of African people to create a huge and cheap workforce, while the businessmen of the North who conducted the slave trade found it highly profitable.

By the time the first census of the new republic was taken in 1790, two-thirds of the four million inhabitants were English-speaking, and the rest were from other nations. Of these, 698,000 were African-Americans who lived in human bondage mostly in the South; another 59,000 were free.

Although the U.S. Congress amended the Constitution in 1808 to ban the importation of slaves, it took nearly half a century before the smuggling of human beings stopped.

2. European Exodus

Between 1820 and 1910, Europe experienced the greatest migration of people to the New World. During that time, at least 38 million Europeans arrived in the United States.

Several important events caused this great migration: the Napoleonic Wars; the political disturbances in Germany, Austria-Hungary, Greece, and Poland; the Potato Famine in Ireland; the religious persecutions of Protestants, Catholics, and Jews in Czarist Russia and other parts of Europe; and the Industrial Revolution, which created thousands of unemployed workers and peasants.

3. Growth of the Continental U.S.

At the same time, the United States was expanding into the West and the Southwest all the way to the Pacific Coast. The country grew by purchase, such as the Louisiana Purchase from Napoleon I of France, which bought an expanse of land from the Mississippi to the Rocky Mountains, and the purchase of Florida from Spain. It grew by war, such as the one waged with Mexico for California and Texas, and the one with Britain in 1812, which

ended with a treaty granting the United States parts of Canada. The nation grew by treaty with, purchase from, or the outright massacre of the Native American tribes for the possession of their ancestral lands.

B. Early Immigration Restrictions

In California, the Gold Rush of 1849 brought not only people from all over America but also the Chinese from across the Pacific Ocean. Chinese workers provided cheap labor for the construction of the Union Pacific Railroad. However, they were not granted the right to become American citizens.

By 1882, there were approximately 300,000 low-wage Chinese laborers in America. These new workers became targets to Americans for antagonism and racial hatred. As a result, the Chinese Exclusion Act was passed in 1882, completely banning noncitizen Chinese from immigrating to the United States. This law remained in effect until 1943.

The Japanese then took the place of the Chinese in agriculture, domestic work, lumber mills, and salmon fisheries. By 1920, approximately 200,000 Japanese immigrants were found on the East Coast and 100,000 more on the sugar plantations in Hawaii. These Japanese workers also were subjected to racial hatred. They were excluded from the United States in 1908 and prohibited from becoming U.S. citizens by the Immigration Act of 1924.

Also during this time, after America purchased the Philippines from Spain in 1898, Filipinos were able to immigrate. They were concentrated mostly on the East Coast and Hawaii as laborers on farms and sugar plantations, and in fish canneries and logging camps. These Filipinos were not spared the racial animosity that permeated American society—and they also were excluded from citizenship by the immigration laws passed in 1924.

This great influx of people in the late 19th and early 20th centuries brought the passage of several restrictive immigration laws. At various times, the U.S. Congress forbade people it considered undesirable to enter—paupers, drunkards, anarchists, polygamists, and people of various specific national origins.

In 1917, Congress passed an Immigration Act to restrict the entry of immigrants, especially the flow of illiterate laborers from central and eastern Europe. This law marked the beginning of a great change in American immigration policy. No immigration was permitted to the United States from the Asiatic Barred Zone. In addition to China and Japan, this zone included India, Siam (Thailand), Indochina (Vietnam, Cambodia, and Laos), Afghanistan, parts of Siberia, Iran, and Arabia, and the islands of Java, Sumatra, Ceylon, Borneo, New Guinea, and Celebes.

After World War I, America faced economic depression and unemployment, and the immigrant became the scapegoat for hard times. In 1921, a tight national-origins quota system was enacted as a temporary measure. Total immigration was limited to about 350,000 per year. Immigration from each country in a given year was limited to 3% of all nationals from that country who were living in the United States during the 1910 census.

This system was made permanent when the U.S. Congress approved the National Origins Act of 1924. Its purpose was “to arrest a trend toward a change in the fundamental composition of the American stock.” Based on the ethnic composition of the United States as recorded in the 1920 census, it limited the entry of aliens from any one country to 2% of the number of their people living in the United States. In one stroke, the law reduced the total immigration of aliens from all countries to 150,000 per year.

The object of the law was not simply to limit immigration but to favor certain kinds of immigrants and keep out others. More immigrants

were permitted from western Europe and fewer from southern and eastern Europe. The law totally excluded Asians. It was intended mainly to prohibit Chinese, Japanese, and Filipinos from acquiring U.S. citizenship.

The American door, for so long left wide open to “all the tired, the poor, the huddled masses yearning to breathe free,” was all but closed against future immigrants for the next 40 years.

After World War II, however, the door would again open—this time, for a few carefully selected groups of immigrants. A new category of naturalized Americans was admitted: thousands of alien soldiers had earned citizenship by serving with the U.S. Armed Forces overseas during the war.

Congress also passed the War Brides Act in 1945 to facilitate the reunion of 118,000 alien spouses and children with members of the U.S. armed forces who had fought and married overseas.

The Displaced Persons Act of 1948 allowed 400,000 refugees to be admitted to the U.S. over the next two years. Most of them had been displaced during the war from Poland, Romania, Hungary, the Baltic area, the Ukraine, and Yugoslavia, and had been living in refugee camps in Germany, Italy, and Austria.

When the Iron Curtain fell on eastern Europe, the Refugee Relief Act of 1953 allowed 214,000 refugees from Communist countries to be admitted into the United States. The anti-Soviet fighters from Hungary, after the suppression of their revolution in 1956, were paroled into the United States—that is, allowed to enter without a visa.

C. Today's Immigration Laws

When the Immigration and Nationality Act was passed in 1952, it wove all the existing immigration laws into one and formed a basic immigration law that's similar to the one we know now. (However, it was not until President Lyndon Johnson signed the

1965 amendments into law that the racially biased national origin quota was abolished.)

Where to Find the Immigration Laws

The entire set of immigration laws is now available online and at law libraries, in Title 8 of the U.S. Code. To look up code sections online, go to www.nolo.com/statute, click “Federal Statutes,” and then enter “8” in the first box and the section number in the second. Occasionally in this book, we'll tell you where you can read a certain piece of the immigration laws by referring to the code section—for example, 8 U.S.C. § 1101. However, immigration lawyers and government officials tend to use a separate numbering system for the same codes, preceded by the letters I.N.A., for “Immigration and Nationality Act,” so when we include citations here we'll also give you the I.N.A. section reference.

The amendments introduced two general ways of becoming an immigrant: by family relationship and by the employment needs of the United States. The legislation established a preference system—giving priority to some groups of immigrants over others. For example, spouses and children of U.S. citizens had higher priority than their brothers and sisters. The law also provided a separate category for refugees.

1. Preference for Skilled Workers

In 1965, the laws were amended to allow skilled workers to move more easily to the United States. The departure of doctors, lawyers, engineers, scientists, teachers, accountants, nurses, and other professionals caused a “brain drain” not only in Europe, but also in Asia, the Pacific Rim, and developing countries.

This preference for skilled workers remains in effect. Although the laws allow a few unskilled workers to immigrate, the numbers are so limited that the category is useless for many people.

2. Refugees and Political Asylum

The end of the Vietnam War resulted in a flow of refugees from the Indochinese peninsula.

In 1980, Fidel Castro declared that the Port of Mariel was open to anyone who wanted to leave. Cuban refugees arrived on the shores of Florida by the thousands. These included some criminals and mentally ill people who had been forced by Castro to leave the jails and mental hospitals.

In response, the U.S. Congress passed the Refugee Act of 1980, which defined a “refugee” as someone who fears persecution in his or her home country because of religious or political beliefs, race, national origin, or ethnic identity.

3. Undocumented Workers

The door opened wider with the Immigration Reform and Control Act of 1986, more commonly known as the “Amnesty Law.” This law benefited a large number of Mexicans and other aliens who had entered and were living without legal status in the United States since January 1, 1982. More than two million aliens were granted legal residency. Their spouses and children are also entitled to become permanent residents.

At the same time, the Amnesty Law attempted to control the future influx of undocumented aliens into the United States—and those controls still exist today. Any employer who hires or recruits an alien or who, for a fee, refers an alien to another employer without first verifying the alien’s immigration status, is subject to a fine ranging from \$200 to \$10,000 for each undocumented alien employed.

4. Immigration Acts From 1990 to the Present

With the Immigration Act of 1990, the U.S. Congress approved its most comprehensive overhaul of immigration law since 1965.

This act provided for a huge increase of immigrants, up to 675,000 from 1995 forward. It aimed to attract immigrants who have the education, skills, or money to enhance the economic life of the country, while at the same time maintaining the immigration policy of family reunification. The law therefore makes it easier for scientists, engineers, inventors, and other highly skilled professionals to enter the United States. Millionaire entrepreneurs have their own immigrant classification.

Under the act, citizens of nations that have had little immigration to the United States for the past five years were allocated 50,000 immigrant visas yearly under the “lottery” system. Temporary protections were added for people fleeing war or natural disasters, such as earthquakes. Refugees from the civil war in El Salvador were the first beneficiaries.

Such provisions made the Immigration Act of 1990 the most humane legislation for immigrants in the past century. However, more recent changes again closed America’s doors to many immigrants. These changes included 1996’s Antiterrorism and Effective Death Penalty Act (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).

And a variety of legislative and regulatory changes have been added since the terrorist attacks of September 11, 2001, tightening controls on would-be immigrants as well as those who are already here.

The most notable of these were the USA Patriot Act of 2002, which expanded the definition of terrorism and increased the government’s authority to detain and deport immigrants, and the November 2002 legislation establishing the new Department of Homeland Security (DHS) which broke the Immigration and Naturalization Service (INS) into three agencies under the DHS’s power. These three new agencies include U.S. Citizenship and Immigration Services (USCIS), which took over the most public INS functions, such as

deciding on applications for immigration benefits; Immigration and Customs Enforcement (ICE), which now handles enforcement of the immigration laws within the U.S. borders; and Customs and Border Protection (CBP), which handles U.S. border enforcement (including at land borders, airports, and seaports). These changes further illustrate that the immigration policy of the United States constantly shifts according to the needs and national purpose of its multiethnic and multiracial people.

D. Looking Forward

Immigration law policies are a subject of ongoing congressional scrutiny, change, and then reverse change. With every shift in the U.S. economy and sense of security, public attitudes toward immigrants shift as well.

But the opening lines of the Declaration of Independence of the United States of America, so eloquently written by Thomas Jefferson some 200 years ago, remain both an inspiration and a challenge:

We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the pursuit of Happiness. ●

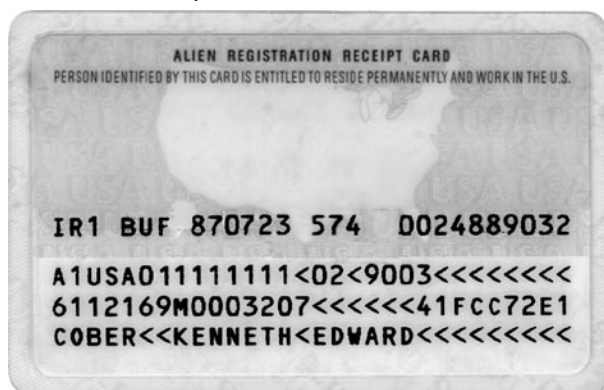
All the Ways to Get a Green Card

A. Family-Based Relationships	12
1. Related or Engaged to a U.S. Citizen	12
2. Related to a Lawful Permanent Resident	12
3. Other Relatives	13
B. Employment-Based Relationships	13
1. Priority Workers.....	13
2. Other Workers	13
C. Special Immigrants.....	14
D. Entrepreneur Immigrants.....	14
E. Asylum and Refugee Status.....	14
F. Diversity Visa Lottery.....	15
G. Amnesties.....	15

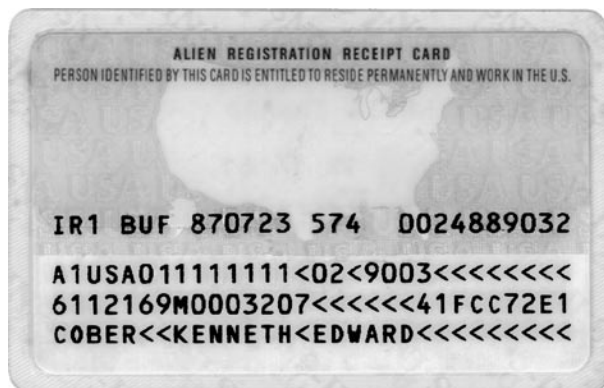
The official name for the green card is the Alien Registration Receipt Card. It has been called a green card because, when it was first introduced in the 1940s, the color of the plastic identification card with the alien's photo, registration number, date of birth, and date and port of entry was green.

The card was blue in the 1960s through the 1970s. In the 1980s, the government changed it to white. Since the 1990s, it has been pink. Even so, this sought-after plastic card continues to be called the green card.

Front of New-Style Card



Back of Old-Style Card



There are several ways someone can obtain a green card—that is, become a lawful permanent resident. The most popular ones are through family and work. The other ways include proving that you're fleeing from persecution, making large investments, or other reasons.

This book covers the green card categories most readily available to ordinary people, with an emphasis on family categories. However, this chapter will tell you a little about the other major green card categories, and where to go next if you're interested in them.

A. Family-Based Relationships

Recognizing that the family is important in the life of the nation, the U.S. Congress has created ways for family members to be reunited with their relatives who are U.S. citizens or lawful permanent residents.

1. Related or Engaged to a U.S. Citizen

If you are the spouse, child, brother, sister, or parent of, or are engaged to be married to, a U.S. citizen, you can become a lawful permanent resident. The person to whom you're related or engaged must start the process by filing a petition with USCIS or the U.S. embassy of your country of residence.

If you are the widow or widower of a U.S. citizen with whom you have lived for at least two years, you can petition for a green card for yourself, provided you file the application within two years of the death of your spouse.

2. Related to a Lawful Permanent Resident

If you are the spouse or unmarried child of a lawful permanent resident, you can obtain a green card—some day. First, the relative who has the green card must file a petition with USCIS or the U.S. embassy of your country of residence. But you'll have to wait several years, until you reach the top of a waiting list, to apply for the actual green card.

3. Other Relatives

If you are the aunt, uncle, niece, nephew, cousin, grandmother, or grandfather of a U.S. citizen, or if you are the brother, sister, parent, or fiancé of someone who holds a green card, you do not qualify for a green card based on a “family relationship.” Understandably, the U.S. Congress had to draw the line on what constitutes a family for the purpose of immigration.



NEXT STEP

If you believe you qualify for a family-based green card, or are helping someone who does, here’s where to go next: Readers who are engaged to U.S. citizens, see Chapter 6. Readers who are married to U.S. citizens or permanent residents, see Chapter 7. Readers who are parents of U.S. citizens, see Chapter 8. Readers who are children of U.S. citizens or permanent residents, see Chapter 9. If you’re an Amerasian child born in Korea, Vietnam, Laos, Cambodia, or Thailand, see Chapter 12. For how to bring in an orphan child, see Chapter 10. Readers who are brothers or sisters of U.S. citizens, see Chapter 13.

B. Employment-Based Relationships

If you do not have a close family member who is a U.S. citizen or who holds a green card, you may be able to obtain a green card through a job offer from an employer in the United States—as either a priority or a non-priority worker.

1. Priority Workers

Priority workers are people with extraordinary ability (such as an internationally known artist), outstanding professors and researchers, and multi-national executives and managers. Another name for this category is “employment first preference.”

Such highly skilled people have a relatively easy immigration process. Some do not even need a job offer, and none are required to go through the difficult labor certification process that other immigrating workers must pass, in which the Department of Labor determines that there are no U.S. workers available and willing to do the same job.

2. Other Workers

Applicants who have been offered jobs that require graduate degrees in the arts or sciences or a profession (such as a law degree), or a master’s degree in business administration (MBA), or a bachelor’s degree plus five years of specialized experience are eligible for immigrant visas. This category is known as “employment second preference.”

These applicants will first need certification from the Department of Labor saying that no U.S. worker is available, willing, and able to do the job.

Also, ordinary professionals (without graduate degrees) and skilled or unskilled workers (factory workers, plumbers, domestic workers, carpenters, and the like) may apply for labor certification and a green card on the basis of a job offer. This category is known as “employment-based third preference.”



NEXT STEP

If you believe you qualify for any of these employment-based green cards, consult an experienced immigration attorney. As explained earlier, this book doesn’t cover employment-based immigration. The employer who has offered you a job (and you must have a job offer in almost all categories described above) may have an attorney it works with regularly. The employer may even be willing to pay the attorney’s fees. If you’ll be selecting your own attorney, see Chapter 25 for tips.

Be Ready to Wait

It may take you a long time to become a permanent resident under some of the immigrant visa categories described in this chapter. Once you file the first petition form to set the process in motion, however, it may become very difficult for you to come to the United States as a tourist or other nonimmigrant, or to have your status as a nonimmigrant extended.

The only groups who need not be concerned with this warning are diplomats (A visas), employees of international organizations (G visas), intracompany transferees (L-1 or L-2 visas), and workers in specialty occupations that require a bachelor's degree or its equivalent (H-1B visas).

C. Special Immigrants

Certain categories of people may obtain a green card by special laws—in addition to certain provisions of the Immigration Act of 1990—intended to benefit limited groups. These include, for example:

- priests, nuns, pastors, ministers, rabbis, imams, and other workers of recognized religious denominations
- former employees of the U.S. government, commended by the U.S. Secretary of State for having performed outstanding service to the government for at least 15 years
- medical doctors who have been licensed in the United States and have worked and lived in the United States since January 1978
- former employees of the Panama Canal Zone
- retired officers or employees of certain international organizations who have lived in the United States for a certain time, plus their spouses and unmarried children

- foreign workers who have been employees of the U.S. consulate in Hong Kong for at least three years
- foreign children who have been declared dependent in juvenile courts in the United States, and
- international broadcasting employees.

All these people fall into a green card category known as “employment-based fourth preference.”



NEXT STEP

If you believe you fit one of these categories, consult an experienced immigration attorney. Special immigrants are not covered in this book. Your employer may be willing to hire an attorney for you.

D. Entrepreneur Immigrants

An alien entrepreneur from any country who invests at least one million dollars in a business (or \$500,000 if the business is in an economically depressed area) and who employs at least ten U.S. citizens or lawful permanent residents is eligible for a green card. Each year, 10,000 immigrant visas are set aside for this millionaire immigrant category, which is designed to create employment. This category is also known as “employment-based fifth preference.”



NEXT STEP

Are you financially able to qualify for a green card based on investment? If so, it's well worth hiring an experienced immigration attorney to help.

E. Asylum and Refugee Status

People who can prove that they fled their country for fear of persecution owing to their race, religion, nationality, membership in a particular social or political group, or political opinion may apply

for legal status as refugees and asylees. A person who gains U.S. government approval as a refugee or asylee can apply for permanent residence status later (more specifically, one year after being admitted to the United States as a refugee or one year after petition for asylee status is granted).



NEXT STEP

For more information on applying for refugee or asylee status, see Chapter 14.

F. Diversity Visa Lottery

The Immigration Act of 1990 created a green card category to benefit people from countries that in recent years have sent the fewest numbers of immigrants to the United States. You can enter the lottery if you are a native of one of those countries and meet certain educational and other requirements. Because the winners are selected through a random drawing, the program is popularly known as the green card lottery. Its official name is the Diversity Immigrant Visa Lottery.

There are 50,000 winners selected each year. They are chosen by dividing the world into regions and allocating no more than 7% of the total green cards to each region. However, even if you win the lottery, you still have to make it through the green card application process—and many people fail, because they're inadmissible or the government can't process their application by the deadlines set by law.



NEXT STEP

For more information on applying for the visa lottery, and what to do if you win, see Chapter 11.

G. Amnesties

Once in a while, Congress gives blanket green card eligibility to people who have been living in the United States illegally. Recent amnesties have covered:

- aliens who applied for amnesty under the Immigration Reform and Control Act of 1986—having been in the United States out of status since January 1, 1982. Their spouses and unmarried children under 21 years of age were also eligible to become permanent residents.
- Nicaraguans, Cubans, Guatemalans, Salvadorans, and certain Eastern Europeans, under the NACARA law.

While the deadlines for both these amnesties have passed, many people's cases are still being decided by USCIS and the courts.



NEXT STEP

Interested in learning more about a past or upcoming amnesty? Consult an experienced immigration attorney or a local nonprofit. Do not go to a USCIS office unless you want to risk deportation. ●

Short-Term Alternatives to a Green Card

A. How Do Foreigners Enter the United States?	18
B. Types of Visas	18
1. Immigrant Visas	18
2. Nonimmigrant Visas.....	18
3. Nonimmigrant Visa Classifications.....	19
C. Tourists Who Can Visit Without a Visa.....	21
1. Countries Exempted.....	21
2. Procedure Required	21
D. The Importance of Staying Legal.....	22
E. How to Extend a Visitor Visa	23
1. When to File.....	23
2. If Your I-94 Is Missing or Destroyed.....	23
F. Changing Your Reason for Staying	24
G. What to Do If Your Application Is Denied.....	24
H. Tips on Filling Out Form I-539.....	25

As you know, this book is only about green cards—or, in legal-speak, U.S. permanent residence. However, you probably also know that many people who want U.S. green cards will never be able to get one. The green card categories are very limited, and the application process is hard to get through successfully. That’s why this chapter will briefly tell you about some other—sometimes easier—ways to come to the United States, even if it’s for a shorter time.



RESOURCE

Want to learn more about the ways to stay temporarily in the United States? See [*U.S. Immigration Made Easy*](#), by Ilona Bray (Nolo).

A. How Do Foreigners Enter the United States?

The basic rule is that you may enter the United States only after receiving permission from the U.S. government, through the U.S. embassy or consulate in your own country. The permission or authority to enter the United States is called a “visa,” and is stamped in your passport by the U.S. consul. The exception is if you are eligible to enter under the Visa Waiver Program; see discussion in Section C, below.

If you enter the United States without permission, without a visa or a visa waiver, and without being examined by the immigration authorities, you are called an “undocumented alien” within the immigration laws and an “illegal alien” by the general public.

B. Types of Visas

There are two kinds of visas an alien can receive from the U.S. embassy or consulate: an immigrant visa and a nonimmigrant visa.

1. Immigrant Visas

Just to avoid confusion, we should mention that even those people who are in the process of getting a green card, as discussed in the rest of this book, must get a visa first if they’ll be arriving from another country. They receive what is called an “immigrant visa.” They receive the actual green card only after they have arrived in the United States and claimed their permanent residency.

2. Nonimmigrant Visas

Nonimmigrant visas are the main topic we’d like to introduce you to in this short chapter. A nonimmigrant visa gives you the ability to stay in the United States temporarily with limited rights. We understand that a visa that expires in a few years is probably your second choice, given that you’re reading a book on green cards. However, a nonimmigrant visa might serve you in two different ways. First, it might allow you to legally visit the United States in order to decide whether you really want a green card, or to make a decision that will lead to your getting a green card. For example, a person might come to the U.S. on a tourist (B-2) visa to visit his or her U.S. citizen boyfriend or girlfriend, to find out whether getting married seems like a good idea.

Second, a nonimmigrant visa might be your only choice for the moment. If your research, using this and other books, leads you to believe that you don’t qualify for a green card, then a nonimmigrant visa might allow you to at least live in the United States for a while, developing U.S. contacts or job skills, hoping that a green card opportunity will open up.

Unfortunately, nonimmigrant visas are not only short-term solutions, but they restrict your life in the United States in other ways. For example, a tourist visa (B-2) does not allow you to work. A student visa (F-1 or M-1) does not allow a student

to stop studying to work. A temporary worker's visa (H-1B), given to a professional worker such as an accountant or engineer, does not authorize you to change employers without permission.

3. Nonimmigrant Visa Classifications

You will often hear visa classifications referred to in shorthand by a letter followed by a number. The following table summarizes the nonimmigrant visa classifications available.

Classification	Summary
A-1	Ambassadors, public ministers, consular officers, or career diplomats, and their immediate families
A-2	Other foreign government officials or employees, and their immediate families
A-3	Personal attendants, servants, or employees, and their immediate families, of A-1 and A-2 visa holders
B-1	Temporary business visitors
B-2	Temporary pleasure visitors
C-1	Foreign travelers in immediate and continuous transit through the U.S.
D-1	Crewmembers (sea or air)
E-1	Treaty traders and their spouses or children
E-2	Treaty investors and their spouses or children
F-1	Academic or language students
F-2	Spouses or children of F-1 visa holders
G-1	Designated principal resident representatives of foreign governments coming to the U.S. to work for an international organization, and their staff members and immediate families
G-2	Other representatives of foreign governments coming to the U.S. to work for an international organization, and their immediate families
G-3	Representatives of foreign governments and their immediate families, who would ordinarily qualify for G-1 or G-2 visas except that their governments are not members of an international organization
G-4	Officers or employees of international organizations, and their immediate families
G-5	Attendants, servants, and personal employees of G-1 through G-4 visa holders, and their immediate families
H-1B	Aliens working in specialty occupations requiring at least a bachelor's degree or its equivalent in on-the-job experience
H-2A	Temporary agricultural workers coming to the U.S. to fill positions for which a temporary shortage of American workers has been recognized by the U.S. Department of Agriculture
H-2B	Temporary workers of various kinds coming to the U.S. to perform temporary jobs for which there is a shortage of available qualified U.S. workers
H-3	Temporary trainees
H-4	Spouses or children of H-1A/B, H-2A/B, or H-3 visa holders
I	Representatives of the foreign press, coming to the U.S. to work solely in that capacity, and their immediate families
J-1	Exchange visitors coming to the U.S. to study, work, or train as part of an exchange program officially recognized by the U.S. Department of State
J-2	Spouses or children of J-1 visa holders
K-1	Fiancés and fiancées of U.S. citizens coming to the U.S. for the purpose of getting married
K-2	Children of K-1 visa holders
K-3	Spouses of U.S. citizens awaiting approval of their immigrant visa petition or the availability of a green card
K-4	Children of K-3 visa holders

Classification	Summary
L-1	Intracompany transferees who work as managers, executives, or persons with specialized knowledge
L-2	Spouses or children of L-1 visa holders
M-1	Vocational or other nonacademic students
M-2	Immediate families of M-1 visa holders
N	Children of certain special immigrants
NATO-1	Principal permanent representatives of member states to NATO and its subsidiary bodies, who are residents in the U.S., and resident official staff members, secretaries general, assistant secretaries general, and executive secretaries of NATO, other permanent NATO officials of similar rank, or their immediate families
NATO-2	Other representatives to member states to NATO and its subsidiary bodies, including its advisers and technical experts of delegations, members of Immediate Article 3, 4 UST 1796 families; dependents of members of forces entering in accordance with the Status-of-Forces Agreement or in accordance with the Protocol on Status of International Military Headquarters; members of such a force if issued
NATO-3	Official clerical staff accompanying representatives of member states to NATO and its any subsidiary bodies, or their immediate families
NATO-4	Officials of NATO other than those who can be classified as NATO-1, or their immediate families
NATO-5	Experts other than officials who can be classified as NATO-1, employed on missions in behalf of NATO, and their dependents
NATO-6	Members of civilian components accompanying forces entering in accordance with provisions of the NATO Status-of-Forces Agreement; members of civilian components attached to or employed by allied headquarters under the Protocol on Status of International Military Headquarters set up pursuant to the North Atlantic Treaty; and their dependents
NATO-7	Attendants, servants, or personal employees of NATO-1 through NATO-6 classes, and their immediate families
O-1	Aliens of extraordinary ability in the sciences, arts, education, business, or athletics
O-2	Support staff of O-1 visa holders
O-3	Spouses or children of O-1 or O-2 visa holders
P-1	Internationally recognized athletes and entertainers
P-2	Artists or entertainers in reciprocal exchange programs
P-3	Artists and entertainers coming to the U.S. to give culturally unique performances in a group
P-4	Spouses or children of P-1, P-2, or P-3 visa holders
Q-1	Participants in international cultural exchange programs
Q-3	Immediate family members of Q-1 visa holders
R-1	Aliens in religious occupations
R-2	Spouses or children of R-1 visa holders
S-5	Certain aliens supplying critical information relating to a criminal organization or enterprise
S-6	Certain aliens supplying critical information relating to terrorism
S-7	Immediate family members of S-5 and S-6 visa holders
T	Women and children who are in the United States because they are victims of trafficking, who are cooperating with law enforcement, and who fear extreme hardship (such as retribution) if returned home
TN	NAFTA professionals from Canada or Mexico
TD	Spouses and children of NAFTA professionals
V	Spouses and children of lawful permanent residents who have been waiting for three years or more to qualify for a green card

C. Tourists Who Can Visit Without a Visa

The Visa Waiver Program allows the citizens of certain countries—that the Department of State (DOS) chooses—to visit the United States for 90 days without first having a tourist visa stamped on their passports.

The Visa Waiver Program was originally set up to eliminate the useless paperwork involved in processing tourist visas for applicants who were clearly temporary visitors. All that visitors require is a passport and a round-trip ticket.

EXAMPLE:

You want to visit the United States for two months. If you live in a country that is included in the Visa Waiver Program, you can take a plane to the United States without first visiting a U.S. consulate to get a tourist visa. You will, however, be required to show a round-trip ticket as evidence that you are simply visiting and that you will return to your country within the 90-day limit.

1. Countries Exempted

Under the Visa Waiver Program, citizens of the following countries who can present a machine-readable passport are exempted from getting visas before entering the United States:

Andorra	Holland	Norway
Australia	(Netherlands)	Portugal
Austria	Iceland	San Marino
Belgium	Ireland	Singapore
Brunei	Italy	Slovenia
Denmark	Japan	Spain
Finland	Liechtenstein	Sweden
France	Luxembourg	Switzerland
Germany	Monaco	
Great Britain	New Zealand	
(United Kingdom)		

To be included in the Visa Waiver Program, the country must have:

- a very low rate of refusals of tourist visa applications, and
- few violations of U.S. immigration laws.

In short, countries whose citizens are least likely to stay too long or work illegally in the United States are most likely to be included in the Visa Waiver Program.

2. Procedure Required

While on the plane to your U.S. destination, you will be handed Form I-94W, Arrival/Departure Record for the Visa Waiver Program, which asks for simple information, including your:

- name
- birthdate
- country of citizenship
- passport number
- airline and flight number
- country where you live
- city where you boarded the airplane, and
- address while staying in the United States.

You must use an ink pen to fill out the form. Print neatly, in all capital letters. The questions on Form I-94W are straightforward, and you should have no trouble answering them. However, if you do have questions or problems when filling out the form, a flight attendant should be able to help you—or ask immigration officers for assistance when you land.

On the bottom half of Form I-94W you will write in your name, birthdate, and country of citizenship. That portion of the form will later be stamped by immigration officers with the port of entry, the date you were admitted, the date by which you must leave the U.S., and the type of visa—and will be attached to your passport.

Disadvantages of Entering Without a Visa

There may be disadvantages to entering the U.S. under the Visa Waiver Program without first getting a visa.

For starters, if you are inadmissible (see Chapter 4) or if you have violated the terms of the Visa Waiver Program in the past, you will probably not be allowed to enter the U.S. on a visa waiver. That means you will be turned around and sent home to apply for a visitor visa at the consulate.

If you are allowed into the U.S., realize that you cannot change your tourist status to another nonimmigrant status, such as that of student or temporary worker, nor can you request an extension of your 90-day stay.

With few exceptions, you also cannot change your status to a lawful permanent resident.

In addition, should the border officials deny you entry into the United States for any reason, you have no right to appeal. Political refugees who are fleeing persecution and who apply for asylum in the United States are the sole exception. (See Chapter 14.)



RESOURCE

Need more information on the process of obtaining student or tourist visas? See *Student & Tourist Visas: How to Come to the U.S.*, by Ilona Bray (Nolo).

D. The Importance of Staying Legal

If you enter the United States as a tourist, student, temporary worker, entertainer, or any other nonimmigrant category, your chances at a future green card depend on your maintaining your legal status and not violating the conditions of your stay in the United States. Do not overstay the limits of your visa. Do not work when you are

not authorized to work. Do not change schools or employers without first requesting and receiving permission from the immigration authorities.

The consequences for breaking the rules controlling immigration may be quite serious: You could be detained in an immigration jail; removal proceedings could be started against you; and, if deported, you could be barred from returning to the United States for the next five years. Even if you are not deported, if you overstay by 180 days (around six months) and then leave the United States, you will have to stay outside for three years before being admitted again. If you overstay by 12 months and then leave, the waiting period is ten years before you will be allowed to return. (See Chapter 4.)

More to the point, by staying within the law, you can make use of almost all the ways enumerated in this book to stay in the United States, as long as your status is legal.

If you are running out of time, one possibility is to apply to extend your stay (if you can show a good reason for needing more time) or change your status, for example from tourist to student or from student to temporary worker. You can apply only if your immigration status is legal, you are not an overstaying visitor, and you have not worked illegally.

If instead you overstay the period written on your I-94 card, your visa will be automatically void—even if it is a multiple entry, indefinite visa. You will then be required to apply for a new visa at the consulate in your home country, unless you can prove “exceptional circumstances.”

If there is some question in your case, or if you need to change status, you should seek professional advice from an immigration support group, specialized clinic, or experienced immigration lawyer. (See Chapter 24.) Do not depend on advice from your friends or relatives.

E. How to Extend a Visitor Visa

Temporary business or tourist visitors—those who hold B-1 or B-2 visas—once admitted to the United States, can apply for an extension of stay. The basis can be business circumstances, family reasons, or any other good reason consistent with your visa.

For example, if a tourist decides to visit different locations or to spend more time with relatives, he or she can seek an extension. The application for extension must be mailed directly to the USCIS Service Center closest to where the applicant lives. (See the USCIS website at www.uscis.gov for contact details.)

The application must include the following:

- Form I-539, Application to Extend/Change Nonimmigrant Status
- Form I-94; a copy may be submitted
- a filing fee (currently \$300); either personal check or money order will be accepted
- a company letter or other supporting documentation stating the reason for the extension request—for example, more business consultations, continuing medical reasons, extended family visit with a complete itinerary, or another reason
- evidence to show that the visit is temporary—particularly, evidence of continued overseas employment or residence and a return ticket, and
- evidence of financial support, such as the purchase of travelers' checks or a bank letter including amounts in accounts. You can also have a family member promise to support you, by filling out USCIS Form I-134, available at www.uscis.gov.

Also attach an itinerary or a letter explaining your reasons for requesting the extension.

Be sure to attach a copy of your Form I-94, Arrival/Departure Record, to your application. It is proof that you arrived in the United States lawfully. Also attach information showing when and how you will depart the United States after your extension, such as a copy of a new plane ticket.

The extension may not give you as much time as you'd like. Extensions of more than six months are rare. However, you are legally allowed to stay until USCIS makes a decision on your extension.

1. When to File

USCIS recommends that you file for an extension at least 45 days before the expiration date of your stay, which is shown on your Form I-94—the white paper attached to your passport when you entered the United States. If you are prone to procrastination, file the request for extension at least 15 days before the expiration date shown on your Form I-94.

2. If Your I-94 Is Missing or Destroyed

Your completed Form I-94 or Form I-95 (Crewman's Landing Permit, issued to crews on ships and airlines)—which is your proof of lawful arrival in the United States—may have been lost, stolen, or damaged. Or perhaps you were not issued the proper form when you entered.

To get the proper documentation, file Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document. (See the sample at the end of this chapter.) It currently costs \$320 to file this form. This form must accompany your Form I-539, Application to Extend/Change Nonimmigrant Status, if you are asking for this as well.

If you are applying to replace a lost or stolen form, submit a copy of the Form I-94 or Form I-95 if you have one, or submit a copy of the biographic page from your passport and a copy of the page indicating admission as claimed.

If you have none of these documents because your passport was lost or stolen, you will have to submit other evidence of your admission. USCIS may accept your ticket and an affidavit, which is a written statement that you have sworn to before a notary public, explaining why you cannot provide any of the documents requested. Submit this affidavit with some proof of identity, such as a copy of your work identification card, credit card, or driver's license. If the passport was stolen, be sure to include a copy of the police report with your submission.

If your Form I-94 has been damaged, attach it anyway.

If you were not issued a Form I-94 when you were admitted to the United States, submit a copy of your passport and the page that was stamped by the border officials when you first arrived.

F. Changing Your Reason for Staying

If you wish to request a change of status from one category to another or apply for a green card, be aware that applying for the change within the first two months after arriving in America may lead to USCIS denying your application based on the theory of “preconceived intent.” Preconceived intent simply means that you lied about your reasons for coming to the United States.

For example, if you attempt to change your status from B-2 tourist to H-1B specialty worker soon after arriving in the United States, USCIS may conclude that you had the preconceived intent of working in the United States when you applied for a tourist visa from the U.S. embassy. Your failure to reveal your actual reason for going to the United States when you first requested a visa could be considered fraud.

A similar problem can arise for people who want to study in the U.S., but sensibly want to visit some schools and see whether they like them before going through the hassle of filling out application forms. You might think that the logical thing would be to come as a tourist and then, after choosing a school, apply for a change to student status.

However, logic and the immigration laws don't always match up. USCIS may deny this type of applicants' requests to change status, saying that the person lied about his or her intention to be a tourist (the person's real, secret intention was to become a student). Fortunately, this is one of the few immigration law traps that you can get around with advance planning. If, when applying for your tourist visa, you tell the consular official that you may wish to change to student status after looking around, then you can have a “prospective student” notation made in your tourist visa. After that, you'll be free to apply to change status without worrying that it will look like you lied.

G. What to Do If Your Application Is Denied

If USCIS denies your request for an extension of your stay in the U.S., you could contest the denial. However, this will require help from an experienced immigration lawyer. (See Chapter 25.)

It might be easier to leave the U.S. and apply for a new visa from overseas. This is far safer than staying in the U.S. illegally.

H. Tips on Filling Out Form I-539

Most of Form I-539 is self-explanatory; see the sample below. However, on Part 4 of Form I-539, Additional Information, Questions 3a through 3f may act as time bombs if you answer “yes” to any one of them—that is, they may explode and prove fatal to your application.

Do not lie and misrepresent your answer as no when the truthful answer is yes. But if you have to answer yes to any of these six questions, it is best to consult with an immigration lawyer or other experienced immigration professional.

EXAMPLE:

The first question on this part of the form is: Are you or any other person included in this application an applicant for an immigrant visa? Do not answer “no” if your U.S. citizen brother filed a relative visa petition for you ten years ago and your immigrant visa is still pending. In all probability, USCIS would find out your fraudulent answer, and you might never get your green card as a result.

Do Not Bring This Book With You

Because this book tells you how to stay and work legally in the United States, you should not have it—or any other book about immigrating to the U.S.—with you when you enter the United States on a tourist or other nonimmigrant visa.

If the border officials suspect that you are not a bona fide tourist, they may detain and question you at the airport or border about your purpose in coming to the United States.

For the same reason, you should not board the plane with a wedding dress, a stack of resumes, or letters from your Aunt Mary or cousin John stating that employment has been arranged for you as soon as you arrive in the United States. Should the border officials find such things when you land, you will not be admitted as a tourist; you may, in fact, be sent back to your home country without being allowed to set foot outside the airport or other port of entry in the United States.

If this happens, you will be unable to return to the U.S. for five years.

Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, Sample Form I-102

OMB No. 1615-0079; Expires 07/30/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-102, Application for Replacement/Initial Nonimmigrant Arrival - Departure Document

START HERE - Please type or print in black ink.**For USCIS Use Only****Part 1. Information about you.**

Family Name	Given Name	Middle Name
Khanmohammad	Parirokh	Jamal
Address - In care of -		
Hossein Lofti		
Street Number and Name		Apt./Suite #
In care of -		
17241 Fulton Street		101
City	State	
New York	NY	
Zip/Postal Code	Country	Date of Birth (mm/dd/yyyy)
10038	U.S.A.	09/24/1968
Country of Birth	Country of Citizenship/Nationality	
France	France	
A # (if any)	U.S. Social Security # (if any)	
None	None	
Date (mm/dd/yyyy) and Place of Last Admission		Current Nonimmigrant Status
08/27/2008		B-1 Visitor
Status Expires on (mm/dd/yyyy)	I-94, I-94W or I-95 Arrival/Departure Document #	
11/26/2008	11211312409	

Part 2. Reason for application.

Check the box that best describes your reason for requesting a replacement document.
(Check one box.)

- a. ☒ I am applying to replace my lost or stolen Form I-94 (or I-94W).
- b. ☐ I am applying to replace my lost or stolen Form I-95.
- c. ☐ I am applying to replace Form I-94 (or I-94W) because it is mutilated. I have attached my original I-94 (or I-94W).
- d. ☐ I am applying to replace Form I-95 because it is mutilated. I have attached my original I-95.
- e. ☐ I was not issued a Form I-94 when I entered as a nonimmigrant, and I am filing this application together with an application for an extension of stay/change of status.
- f. ☐ I was issued a Form I-94, I-94W or Form I-95 with incorrect information, and I am requesting USCIS to correct the document. I have attached my original Form I-94, I-94W or Form I-95.
- g. ☐ I was not issued a Form I-94 when I entered as a nonimmigrant member of the military and I am filing this application for an initial Form I-94.

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	
☐ Applicant Interviewed on _____	
New I-94 #	
Remarks	
Action Block	
To Be Completed by Attorney or Representative, if any. ☐ Fill in box if G-28 is attached to represent the applicant.	
ATTY State License #	

Sample Form I-102 (page 2)

Part 3. Processing information.

1. Are you filing this application with any other petition or application?

☐ No☒ Yes - Form #

I-539

2. Are you now in removal proceedings?

☒ No☐ Yes (Give detailed information regarding the proceedings. If you need more space to complete the answer, use a separate sheet(s) of paper. Write your name and A #, if any, and "Part 3, Number 2" at the top of each sheet.)

3. If you are unable to provide the original of your Form I-94, I-94W or I-95, give the following information:

Your name exactly as it appears on Form I-94, I-94W or I-95, if known (*print clearly*)

Parirokh J. Khanmohammad

Class of Admission:

Place of Admission:

B-1

Newark, NJ

Part 4. Signature. *Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature**Daytime Telephone Number** (*with area code*)**Date** (*mm/dd/yyyy*)

Parirokh J. Khanmohammad

(212) 555-1212

09/19/2008

Part 5. Signature of person preparing form, if other than above. (*Sign below.*)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature**Print or Type Your Name****Firm Name****Firm Address** (*Street Number and Name or P.O. Box, City, State, Zip Code*)**Daytime Telephone Number** (*with area code*)**E-Mail Address** (*if any*)**Date** (*mm/dd/yyyy*)

()

Application to Extend/Change Nonimmigrant Status, Sample Form I-539 (page 1)

OMB No. 1615-0003; Expires 11/30/07

Department of Homeland Security
U.S. Citizenship and Immigration Services

**I-539, Application to Extend/
Change Nonimmigrant Status**

START HERE - Please type or print in black ink.

Part 1. Information about you.

Family Name Martino		Given Name Tony		Middle Name Fernando
Address - In care of - Antero Martino				
Street Number and Name 3746 81st Street			Apt. # 2D	
City Jackson Heights	State NY	Zip Code 11372	Daytime Phone # 718-555-1212	
Country of Birth Philippines		Country of Citizenship Philippines		
Date of Birth (mm/dd/yyyy) 08/02/1969	U. S. Social Security # (if any) None		A # (if any) None	
Date of Last Arrival Into the U.S. 02/05/2008		I-94 # 334533908 03		
Current Nonimmigrant Status B-2		Expires on (mm/dd/yyyy) 08/04/2008		

Part 2. Application type. (See instructions for fee.)

1. I am applying for: (Check one.)
- ☒ An extension of stay in my current status.
 - ☐ A change of status. The new status I am requesting is: _____
 - ☐ Other: (Describe grounds of eligibility.) _____
2. Number of people included in this application: (Check one.)
- ☐ I am the only applicant.
 - ☒ Members of my family are filing this application with me.
The total number of people (including me) in the application is: 2
(Complete the supplement for each co-applicant.)

Part 3. Processing information.

1. I/We request that my/our current or requested status be extended until
(mm/dd/yyyy): 01/15/2008
2. Is this application based on an extension or change of status already granted to your spouse, child or parent?
☒ No ☐ Yes. USCIS Receipt # _____
3. Is this application based on a separate petition or application to give your spouse, child or parent an extension or change of status? ☒ No ☐ Yes, filed with this I-539.
☐ Yes, filed previously and pending with USCIS. Receipt #: _____
4. If you answered "Yes" to Question 3, give the name of the petitioner or applicant: _____

If the petition or application is pending with USCIS, also give the following data:

Office filed at _____ Filed on (mm/dd/yyyy) _____

Part 4. Additional information.

1. For applicant #1, provide passport information:		Valid to: (mm/dd/yyyy)
Country of Issuance Philippines		01/16/2010
2. Foreign Address: Street Number and Name 66 Felix Manalo Street		Apt. #
City or Town Cubao, Quezon City		State or Province
Country Philippines		Zip/Postal Code 1111

For USCIS Use Only

Returned	Receipt
Date	
Resubmitted	
Date	
Reloc Sent	
Date	
Reloc Rec'd	
Date	
☐ Applicant Interviewed on _____ Date	
☐ Extension Granted to (Date): _____ Change of Status/Extension Granted New Class: From (Date): _____ To (Date): _____	
If Denied: ☐ Still within period of stay ☐ S/D to: _____ ☐ Place under docket control	
Remarks:	
Action Block	
To Be Completed by Attorney or Representative, if any ☐ Fill in box if G-28 is attached to represent the applicant.	
ATTY State License #	

Sample Form I-539 (page 2)

Part 4. Additional information.

3. Answer the following questions. If you answer "Yes" to any question, explain on separate sheet of paper.	Yes	No
a. Are you, or any other person included on the application, an applicant for an immigrant visa?	☐	☒
b. Has an immigrant petition ever been filed for you or for any other person included in this application?	☐	☒
c. Has a Form I-485, Application to Register Permanent Residence or Adjust Status, ever been filed by you or by any other person included in this application?	☐	☒
d. Have you, or any other person included in this application, ever been arrested or convicted of any criminal offense since last entering the U.S.?	☐	☒
e. Have you, or any other person included in this application, done anything that violated the terms of the nonimmigrant status you now hold?	☐	☒
f. Are you, or any other person included in this application, now in removal proceedings?	☐	☒
g. Have you, or any other person included in this application, been employed in the U.S. since last admitted or granted an extension or change of status?	☐	☒
• If you answered "Yes" to Question 3f, give the following information concerning the removal proceedings on the attached page entitled "Part 4. Additional information. Page for answers to 3f and 3g." Include the name of the person in removal proceedings and information on jurisdiction, date proceedings began and status of proceedings. • If you answered "No" to Question 3g, fully describe how you are supporting yourself on the attached page entitled "Part 4. Additional information. Page for answers to 3f and 3g." Include the source, amount and basis for any income. • If you answered "Yes" to Question 3g, fully describe the employment on the attached page entitled "Part 4. Additional information. Page for answers to 3f and 3g." Include the name of the person employed, name and address of the employer, weekly income and whether the employment was specifically authorized by USCIS.		
	Yes	No
h. Are you currently or have you ever been a J-1 exchange visitor or a J-2 dependent or a J-1 exchange visitor?	☐	☒
If yes, please provide the dates you maintained status as a J-1 exchange visitor or J-2 dependant. Also, please provide proof of your J-1 or J-2 status, such as a copy of Form DS-2019, Certificate of Eligibility for Exchange Visitor Status or a copy of your passport that includes the J visa stamp.		

Part 5. Signature. (Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature <i>Tony F. Martino</i>	Print your Name Tony F. Martino	Date 06/29/2008
Daytime Telephone Number 718-555-1212	E-Mail Address tonytourist@hotmail.com	

NOTE: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested benefit and this application may be denied.

Sample Form I-539 (page 3)

Part 6. Signature of person preparing form, if other than above. (Sign below.)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print your Name	Date
Firm Name and Address	Daytime Telephone Number (Area Code and Number)	
	Fax Number (Area Code and Number)	E-Mail Address

Part 4. Additional information. Page for answers to 3f and 3g.

If you answered "Yes" to Question 3f in Part 4 on Page 3 of this form, give the following information concerning the removal proceedings. Include the name of the person in removal proceedings and information on jurisdiction, date proceedings began and status of proceedings.

If you answered "No" to Question 3g in Part 4 on Page 3 of this form, fully describe how you are supporting yourself. Include the source, amount and basis for any income.

My brother, Antero Martino, will provide my lodging and other support. See attached Form I-134, Affidavit of Support.

If you answered "Yes" to Question 3g in Part 4 on Page 3 of this form, fully describe the employment. Include the name of the person employed, name and address of the employer, weekly income and whether the employment was specifically authorized by USCIS.

Sample Form I-539 (page 4)

Supplement -1**Attach to Form I-539 when more than one person is included in the petition or application.***(List each person separately. Do not include the person named in the Form I-539.)*

Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Martino	Eduardo	Lorenzo	12/01/93
Country of Birth	Country of Citizenship	U.S. Social Security # (if any)	A # (if any)
Philippines	Philippines	None	None
Date of Arrival (mm/dd/yyyy)		I-94 #	
02/05/06		334 533 909 03	
Current Nonimmigrant Status:		Expires on (mm/dd/yyyy)	
B-2		08/04/2008	
Country Where Passport Issued		Expiration Date (mm/dd/yyyy)	
Philippines		03/08/2010	
Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Martino	Miranda	C.	04/02/69
Country of Birth	Country of Citizenship	U.S. Social Security # (if any)	A # (if any)
Philippines	Philippines	None	None
Date of Arrival (mm/dd/yyyy)		I-94 #	
02/05/06		334 533 910 03	
Current Nonimmigrant Status:		Expires on (mm/dd/yyyy)	
B-2		08/04/2008	
Country Where Passport Issued		Expiration Date (mm/dd/yyyy)	
Philippines		01/16/2009	
Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Country of Citizenship	U.S. Social Security # (if any)	A # (if any)
Date of Arrival (mm/dd/yyyy)		I-94 #	
Current Nonimmigrant Status:		Expires on (mm/dd/yyyy)	
Country Where Passport Issued		Expiration Date (mm/dd/yyyy)	
Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Country of Citizenship	U.S. Social Security # (if any)	A # (if any)
Date of Arrival (mm/dd/yyyy)		I-94 #	
Current Nonimmigrant Status:		Expires on (mm/dd/yyyy)	
Country Where Passport Issued		Expiration Date (mm/dd/yyyy)	
Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Country of Citizenship	U.S. Social Security # (if any)	A # (if any)
Date of Arrival (mm/dd/yyyy)		I-94 #	
Current Nonimmigrant Status:		Expires on (mm/dd/yyyy)	
Country Where Passport Issued		Expiration Date (mm/dd/yyyy)	

If you need additional space, attach a separate sheet(s) of paper.*Place your name, A #, if any, date of birth, form number and application date at the top of the sheet(s) of paper.*

Will Inadmissibility Bar You From Getting a Green Card?

A. What Is Inadmissibility?	34
B. The Possibility of Waiving Inadmissibility	34
C. Reversing an Inadmissibility Finding	34
1. Correcting Grounds of Inadmissibility	34
2. Proving That Inadmissibility Does Not Apply	34
3. Proving That an Inadmissibility Finding Is Incorrect	41
4. Applying for a Waiver	41
D. Most Troublesome Grounds of Inadmissibility	41
1. Being Unable to Show Family Financial Support	41
2. Being Stopped at the Border	44
3. Being Barred From Returning After Past Unlawful U.S. Presence	44
4. Limitations on Who Can Adjust Status	45
5. Having Committed Crimes Involving Alcohol or Drugs	46
6. Suspected of Terrorist Activity	47

The U.S. government has decided that people with certain histories or conditions are a risk to others and therefore should not be allowed to enter the country. These people are called “inadmissible.” Inadmissibility creates problems in green card applications. This chapter explains the conditions that make a person inadmissible—and whether there is any way under the bar of inadmissibility.

A. What Is Inadmissibility?

The U.S. government keeps a list of reasons that make a person unwelcome in the United States. The list includes affliction with various physical and mental disorders, commission of crimes, participation in terrorist or subversive activity, and more.

You may be judged inadmissible any time after you have filed an application for a green card, nonimmigrant visa, or other immigration status. Even a permanent resident who departs the United States for more than 180 days may be found inadmissible upon return.

If you are found inadmissible, your immigration application will probably be denied. The notice of denial will be issued in the same manner as denials for any other reason. Even if you manage to hide your inadmissibility long enough to receive a green card or visa and be admitted into the U.S., if the problem is discovered later—perhaps when you apply for U.S. citizenship—you can be removed or deported.

B. The Possibility of Waiving Inadmissibility

Not everyone who falls into one of the categories of inadmissibility is absolutely barred from getting a green card or otherwise entering the United States. Some grounds of inadmissibility may be legally excused, or “waived.” Others may not.

Below is a chart summarizing all the grounds of inadmissibility, whether or not a waiver is available, and the special conditions you must meet to get a waiver. For more details, see I.N.A. § 212, 8 U.S.C. § 1182.

C. Reversing an Inadmissibility Finding

There are four ways to get past a finding that you are inadmissible. Each of them is discussed in some detail below. However, you’ll most likely need an attorney’s help.

- In the case of physical or mental illness only, you may be able to correct the condition.
- You can prove that you really don’t fall into the category of inadmissibility USCIS believes you do.
- You can prove that the accusations of inadmissibility against you are false.
- You can apply for a waiver of inadmissibility.

1. Correcting Grounds of Inadmissibility

If you have had a physical or mental illness that is a ground of inadmissibility and you have been cured of the condition by the time you submit your green card application, or at least by the time a decision is made on it, you will no longer be considered inadmissible for that reason. If the condition is not cured by the time you apply, with certain illnesses you can still get a waiver of inadmissibility.

2. Proving That Inadmissibility Does Not Apply

Proving that inadmissibility does not apply in your case is a method used mainly to overcome criminal and ideological grounds of inadmissibility. When dealing with criminal grounds of inadmissibility, the immigration authorities will consider both the

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Health Problems		
Communicable diseases, particularly tuberculosis and HIV (AIDS).	Yes	A waiver is available to a person who is the spouse, unmarried son or daughter, or the unmarried minor lawfully adopted child of a U.S. citizen or permanent resident, or of an alien who has been issued an immigrant visa; or to an individual who has a son or daughter who is a U.S. citizen; or to a permanent resident or an alien issued an immigrant visa, upon compliance with USCIS's terms and regulations. Also, HIV-positive business and tourist visitors coming for up to 60 days receive an automatic ("categorical") waiver.
Physical or mental disorders that threaten the property, welfare, and safety of the applicant or others.	Yes	Special conditions required by USCIS, at its discretion.
Drug abusers or addicts.	No	
Failure to show that the applicant has been vaccinated against certain vaccine-preventable diseases.	Yes	The applicant must show either that he or she subsequently received the vaccine, that the vaccine is medically inappropriate as certified by a civil surgeon, or that having the vaccine administered is contrary to the applicant's religious beliefs or moral convictions.
Criminal and Related Violations		
Commission of crimes involving moral turpitude.	Yes	Waivers are not available for commission of crimes such as attempted murder or conspiracy to commit murder, or for murder, torture, or drug crimes, or for people previously admitted as permanent residents, if they have been convicted of aggravated felony since such admission or if they have fewer than seven years of lawful continuous residence before deportation proceedings are initiated against them. Waivers for all other offenses are available only if the applicant is a spouse, parent, or child of a U.S. citizen or green cardholder; or the only criminal activity was prostitution; or the actions occurred more than 15 years before the application for a visa or green card is filed, and the alien shows that he or she is rehabilitated and is not a threat to U.S. security.
Convictions for two or more crimes.	Yes	
Prostitutes or procurers of prostitutes.	Yes	
Diplomats or others involved in serious criminal activity who have received immunity from prosecution.	Yes	

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Drug offenders.	No	However, there may be an exception for a first and only offense or for juvenile offenders. There's also a waiver for simple possession of less than 30 grams of marijuana.
Drug traffickers.	No	
Immediate family members of drug traffickers who knowingly benefited from their illicit money within the last five years.	No	But note that the problem "washes out" after five years.
National Security and Related Violations		
Spies, governmental saboteurs, violators of export or technology transfer laws.	No	
People intending to overthrow the U.S. government.	No	
Terrorists and members or representatives of foreign terrorist organizations.	No	
People whose entry would have adverse consequences for U.S. foreign policy, unless the applicant is an official of a foreign government, or the applicant's activities or beliefs would normally be lawful in the U.S., under the Constitution.	No	
Members of totalitarian parties.	Yes	An exception is made if the membership was involuntary, or is or was when the applicant was under 16 years old, by operation of law, or for purposes of obtaining employment, food rations, or other "essentials" of living. An exception is also possible for past membership if the membership ended at least two years prior to the application (five years if the party in control of a foreign state is considered a totalitarian dictatorship). If neither applies, a waiver is available for an immigrant who is the parent, spouse, son, daughter, brother, or sister of a U.S. citizen, or a spouse, son, or daughter of a permanent resident.
Nazis	No	

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Economic Grounds		
Any person who, in the opinion of a USCIS or a border or consular official, is likely to become a “public charge,” that is, receive public assistance or welfare in the United States. The official can consider factors such as the person’s age, health, family and work history, and previous use of public benefits.	No	However, the applicant may cure the ground of inadmissibility by overcoming the reasons for it or obtaining an Affidavit of Support from a family member or friend.
Family-sponsored immigrants and employment-sponsored immigrants where a family member is the employment sponsor (or such a family member owns 5% of the petitioning business) and the sponsor has not executed an Affidavit of Support (Form I-864).	No	But an applicant may cure the ground of inadmissibility by subsequently satisfying affidavit of support requirements.
Nonimmigrant public benefit recipients (where the individual came as nonimmigrant and applied for benefits when he or she was not eligible or through fraud). Five-year bar to admissibility.	No	But ground of inadmissibility expires after five years.
Labor Certifications & Employment Qualifications		
People without approved labor certifications, if one is required in the category under which the green card application is made.	No	
Graduates of unaccredited medical schools, whether inside or outside of the U.S., immigrating to the U.S. in a second or third preference category based on their profession, who have not both passed the foreign medical graduates exam and shown proficiency in English. (Physicians qualifying as special immigrants who have been practicing medicine in the U.S. with a license since January 9, 1978, are not subject to this rule.)	No	
Uncertified foreign healthcare workers seeking entry based on clinical employment in their field (but not including physicians).	No	But applicant may show qualifications by submitting a certificate from the Commission on Graduates of Foreign Nursing Schools or the equivalent.

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Immigration Violators		
People who entered in the U.S. without inspection by U.S. border authorities.	Yes	Available for certain battered women and children who came to the U.S. escaping such battery or who qualify as self-petitioners. Also available for some individuals who had visa petitions or labor certifications on file before January 14, 1998 or before April 30, 2001 if they were in the U.S. on December 21, 2000 (\$1,000 penalty required for latter waiver). Does not apply to applicants outside of the U.S.
People who were deported after a hearing and seek admission within ten years.	Yes	Discretionary with USCIS.
People who have failed to attend removal (deportation) proceedings (unless they had reasonable cause for doing so). Five-year bar to reentry.	Yes	Discretionary with USCIS.
People who have been summarily excluded from the U.S. and again attempt to enter within five years.	Yes	Advance permission to apply for readmission. Discretionary with USCIS.
People who made misrepresentations during the immigration process.	Yes	The applicant must be the spouse or child of a U.S. citizen or green card holder. A waiver will be granted if the refusal of admission would cause extreme hardship to that relative. Discretionary with USCIS.
People who made a false claim to U.S. citizenship.	No	
Individuals subject to a final removal (deportation) order under the Immigration and Naturalization Act § 274C (Civil Document Fraud Proceedings).	Yes	Available to permanent residents who voluntarily left the U.S., and to those applying for permanent residence as immediate relatives or other family-based petitions if the fraud was committed solely to assist the person's spouse or child and provided that no fine was imposed as part of the previous civil proceeding.
Student visa abusers (persons who improperly obtain F-1 status to attend a public elementary school or adult education program, or transfer from a private to a public program except as permitted). Five-year bar to admissibility.	No	

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Certain individuals twice removed (deported) or removed after aggravated felony. Twenty-year bar to admissibility for those twice deported.	Yes	Discretionary with USCIS (advance permission to apply for readmission).
Individuals unlawfully present (time counted only after April 1, 1997 and after the age of 18). Presence for 180–364 days results in three-year bar to admissibility. Presence for 365 or more days creates ten-year bar to admissibility. Bars kick in only when the individual departs the U.S. and seeks reentry.	Yes	A waiver is provided for an immigrant who has a U.S. citizen or permanent resident spouse or parent to whom refusal of the application would cause extreme hardship. There is also a complex body of law concerning when a person's presence will be considered "lawful," for example, if one has certain applications awaiting decisions by USCIS or is protected by battered spouse/child provisions of the immigration laws.
Individuals unlawfully present after previous immigration violations. (Applies to persons who were in the U.S. unlawfully for an aggregate period over one year, who subsequently reenter without being properly admitted. Also applies to anyone ordered removed who subsequently attempts entry without admission.)	No	A permanent ground of inadmissibility. However, after being gone for ten years, an applicant can apply for permission to reapply for admission.
Stowaways.	No	
Smugglers of illegal aliens.	Yes	Waivable if the applicant was smuggling in people who were immediate family members at the time, and either is a permanent resident or is immigrating under a family-based visa petition as an immediate relative; the unmarried son or daughter of a U.S. citizen or permanent resident; or the spouse of a U.S. permanent resident.
Document Violations		
People without required current passports or visas.	No	Except limited circumstance waivers. Under new "summary removal" procedures, border officials may quickly deport people for five years who arrive without proper documents or make misrepresentations during the inspection process.

Inadmissibility Summary		
Ground of Inadmissibility	Waiver Available	Conditions of Waiver
Draft Evasion and Ineligibility for Citizenship		
People who are permanently ineligible for citizenship.	No	
People who are draft evaders, unless they were U.S. citizens at the time of evasion or desertion.	No	
Miscellaneous Grounds		
Practicing polygamists.	No	
Guardians accompanying excludable aliens.	No	
International child abductors. (The exclusion does not apply if the applicant is a national of a country that signed the Hague Convention on International Child Abduction.)	No	
Unlawful voters (voting in violation of any federal, state, or local law or regulation).	No	
Former U.S. citizens who renounced citizenship to avoid taxation.	No	

type of crime committed and the nature of the punishment to see whether your criminal activity constitutes a ground of inadmissibility.

For example, with some criminal activity, only actual convictions are grounds of inadmissibility. If you have been charged with a crime and the charges were then dropped, you may not be inadmissible.

Another example involves crimes of moral turpitude. Crimes of moral turpitude are those showing dishonesty or basically immoral conduct. Committing an act that is considered a crime of moral turpitude can make you inadmissible, even if you have not been convicted.

Crimes with no element of moral turpitude, however, are often not considered grounds of inadmissibility. Laws differ from state to state

on which crimes are considered to involve moral turpitude and which are not.

Other factors that may work to your benefit are:

- expungement laws that remove the crime from your record (but don't assume this will take care of the problem)
- the length of the prison term
- how long ago the crime was committed
- the number of convictions in your background
- conditions of plea bargaining, and
- available pardons.

Sometimes, a conviction can be erased or vacated if you can show it was unlawfully obtained or you were not advised of its immigration consequences.

Proving that a criminal ground of inadmissibility does not apply in your case is a complicated

business. You need to have a firm grasp not only of immigration law, but also the technicalities of criminal law. If you have a criminal problem in your past, you may still be able to get a green card, but not without the help of an experienced immigration lawyer. (See Chapter 24.)

3. Proving That an Inadmissibility Finding Is Incorrect

When your green card or nonimmigrant visa application is denied because you are found inadmissible, you can try to prove that the finding of inadmissibility is incorrect. For example, if a USCIS medical examination shows that you have certain medical problems, you can present reports from other doctors stating that the first diagnosis was wrong and that you are free of the problem condition. If you are accused of lying on a visa application, you can present evidence proving you told the truth, or that any false statements were made unintentionally.

4. Applying for a Waiver

In many circumstances, you may be able to get a waiver of inadmissibility. By obtaining a waiver, you don't eliminate or disprove the ground of inadmissibility. Instead you ask USCIS to overlook the problem and give you a green card or visa anyway.

All green card and visa application forms ask questions designed to find out whether any grounds of inadmissibility apply in your case. When the answers to the questions on these forms clearly show that you are inadmissible, you may be authorized to begin applying for a waiver immediately on filing your application. In most cases, however, the consulate or USCIS office insists on having your final visa interview before ruling that you are inadmissible. If the USCIS office or consulate handling your case decides to wait until your final interview before finding you inadmissible, this will delay your ability to file for a

waiver. This may delay your getting a green card or visa; waivers can take many months to process.

Once it is determined that a waiver is necessary, you will need to complete Form I-601 and pay a filing fee (currently \$545). Note that if you file this with a U.S. consulate abroad, you will have to wait for the consulate to send your application to a USCIS office. The consulate cannot approve the waiver.

Once again, there are many technical factors that control whether or not a waiver of inadmissibility is granted. If you want to get one approved, you stand the best chance of success by hiring a good immigration lawyer.

D. Most Troublesome Grounds of Inadmissibility

The 1996 Immigration Reform law made many changes to the immigration code, most of them restrictive. Although it's been several years since their passage, these continue to be among the most troublesome of the grounds of inadmissibility for many immigrants. Some of the grounds that have the most significant impact are summarized here.

1. Being Unable to Show Family Financial Support

All family-based immigrants seeking permanent residence must now include an Affidavit of Support, on either Form I-864 or I-864-EZ. This form helps satisfy the requirement that an immigrant show he or she is not likely to become a public charge (in other words, receive government assistance or welfare). (But even with this form, you can still be found inadmissible on public charge grounds.) The idea is that, by filling out the form and attaching various documents, the petitioning U.S. citizen or permanent resident shows how much he or she earns and has saved, and promises to use that money to support the immigrant.

**SKIP AHEAD**

For a sample filled out Form I-864, see Chapter 19 of this book.

The I-864-EZ is a shorter, easier version of the form, which can be used only if you are the only person your petitioner is sponsoring, and your petitioner can meet the sponsorship requirements based solely upon his or her income (and nobody else's).

Exceptions. There are, however, limited exceptions to this requirement. If you, the immigrant, will qualify for automatic U.S. citizenship upon becoming a permanent resident (discussed in Chapter 9), the I-864 is not necessary. Also, if the immigrant has already worked in the U.S. for 40 or more work quarters as defined by Social Security (about ten years), Form I-864 is not required. Moreover, the immigrant can count time worked by either a parent, while the immigrant was under the age of 18, or by a spouse, toward these 40 quarters.

Others who don't need to submit a Form I-864 include self-petitioning widows or widowers of U.S. citizens, and self-petitioning battered spouses or children (explained in later chapters).

If you're exempt from the Affidavit of Support requirement due to one of these exceptions, you should fill out Form I-864W instead of the regular Form I-864.

Sponsor's responsibilities. The requirements for this Affidavit of Support are very different from those of its predecessor, Form I-134. The government can rely on the I-864 to hold the sponsor responsible if the immigrant receives public benefits. And it is also enforceable by the immigrant family member against the sponsor for support.

Finally, it requires that the sponsor show that he or she has at least 125% of income for a similar household size (including family and dependents), according to the federal Poverty Guidelines level.

These Poverty Guidelines are revised annually; see the table below. They show, for example, that in 2007, the sponsor would have to prove an income of \$25,000 or more in order to support a family of four. (We don't just mean four immigrants—they ask you to count up everyone who is living in the house and depending on the sponsor for support.)

Your sponsor's income will need to meet the guidelines for the year when your Affidavit of Support is filed—don't worry if the required income levels get raised later, it won't affect you.

The immigrant can also add his or her income to the mix to help reach the Poverty Guidelines minimum, if already living with the petitioner in the U.S. and working legally at a job that will continue after getting the green card.

Who fills out the form. Family-based immigrants who file adjustment of status or immigrant visa applications are required to have Form I-864 filed by the person who is sponsoring their immigrant petition. However, another person—a joint sponsor—may add income to the sponsor's if he or she meets the 125% income requirement for the household and is:

- willing to be jointly liable
- a U.S. legal permanent resident or citizen
- over 18 years old, and
- living in the United States.

The joint sponsor files a separate Affidavit of Support. The principal immigrant can have only one joint sponsor. However, if the joint sponsor's income is not sufficient to cover all the derivative beneficiaries (such as children), a second joint sponsor may be added. Two joint sponsors is the limit, however.

Other household members may also join their income to that of the primary sponsor to help reach the 125% level, but only if they are age 18 or older, and agree to be jointly liable by filing Form I-864A, Contract Between Sponsor and Household Member. This is different than being a joint

2008 Poverty Guidelines

2008 Poverty Guidelines		
Minimum Income Requirement for Use in Completing Form I-864.		
For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam:		
<u>Sponsor's Household Size</u>	<u>100% of Poverty Guidelines</u>	<u>125% of Poverty Line</u> For all other sponsors
	For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child.	
2	\$14,000	\$17,500
3	17,600	22,000
4	21,200	26,500
5	24,800	31,000
6	28,400	35,500
7	32,000	40,000
8	35,600	44,500
	Add \$3,600 for each additional person.	Add \$4,500 for each additional person.

For Alaska:		For Hawaii:		
<u>Sponsor's Household Size</u>	<u>100% of Poverty Line</u> For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child	<u>125% of Poverty Line</u> For all other sponsors	<u>100% of Poverty Line</u> For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child	<u>125% of Poverty Line</u> For all other sponsors
2	\$17,500	\$21,875	\$16,100	\$20,125
3	22,000	27,500	20,240	25,300
4	26,500	33,125	24,380	30,475
5	31,000	38,750	28,520	35,650
6	35,500	44,375	32,660	40,825
7	40,000	50,000	36,800	46,000
8	44,500	55,625	40,940	51,175
	Add \$4,500 for each additional person	Add \$5,625 for each additional person.	Add \$4,140 for each additional person.	Add \$5,175 for each additional person.

sponsor. It means that the person is literally living in the same house—perhaps is an older child or a parent—and is willing to have his or her income counted toward the household total.

Using assets to meet the requirements. Personal assets of either the sponsor or the immigrant—such as property, bank account deposits, and personal property such as automobiles—may also be used to supplement the sponsor's income if the primary sponsor's actual income does not add up to 125% of the federal Poverty Guidelines income levels.

The sponsor or immigrant must show assets worth five times the difference between the Poverty Guidelines level and actual household income (or three times the difference for immediate relatives, for example husband and wife). The assets must be readily convertible to cash within one year. If using assets owned by the sponsor's household members or the immigrant, those people must submit a Form I-864A.



SEE AN EXPERT

The requirements and paperwork burden of the Affidavit are complicated and substantial. If you have questions about your eligibility or the scope of your legal responsibility, consult an experienced immigration attorney.

Immigrant's Story: Compensating for a Low Salary

Here is how Daniel, a U.S. citizen, dealt with his low income in sponsoring his Norwegian wife, Liv, and her twin boys from a previous marriage.

Daniel works as a youth counselor at a nonprofit, earning \$21,000 a year. However, according to the 2007 Poverty Guidelines, Daniel will need an income of \$25,812 or more to support a family of four—meaning he's \$4,812 short. Liv plans to work in the U.S., but she is currently living in Norway, so that doesn't help.

Daniel could pick up a weekend job, to raise his income until Liv gets her green card (at which time no one would stop him from quitting). However, an easier solution is for him to declare his assets when filling out Form I-864. Because the value of assets must be divided by three for U.S. citizens sponsoring their spouses, Daniel will need \$14,436 in assets to make up the \$4,812 shortfall.

Fortunately, Daniel has \$15,000 in a money market account, so declaring this on his Form I-864 will be enough to help Liv and her children get approved for a green card. He'll need to remember to include a copy of a bank statement showing how much is in the account when he prepares the Form I-864.

2. Being Stopped at the Border

Another law that has a drastic impact on individuals requesting to enter the United States is the summary exclusion law. This law empowers an inspector at the airport to exclude and deport you at your attempted entry to the U.S. if:

- the inspector thinks you are making a misrepresentation (lying) about practically anything connected to your right to enter the U.S.—such as your purpose in coming, intent to return, prior immigration history, or use of false documents, or
- you do not have the proper documentation to support your entry to the U.S. in the category you are requesting.

If the inspector excludes you, you may not request entry for five years, unless a special waiver is granted. For this reason, it is extremely important to understand the terms of your requested status and not make any misrepresentations.

If the inspector looks likely to summarily exclude you, you may request withdrawing your application to enter the U.S. to prevent having the five-year deportation order on your record. The inspector may allow you to do this in some cases.

3. Being Barred From Returning After Past Unlawful U.S. Presence

Fairly new grounds of inadmissibility apply to people who were unlawfully present in the United States for 180 days (approximately six months) after April 1, 1997, who subsequently left, and who now seek admission through adjustment of status or by applying for an immigrant or nonimmigrant visa. Such people are subject to a three-year waiting period; the period is ten years if they were unlawfully present for 365 days after April 1, 1997.

Some important exceptions apply. For example, as long as you were under 18, your time in the U.S. doesn't count as unlawful presence. And the

presence of people who have a bona fide pending asylum application or a pending application for adjustment of status is perfectly lawful. Also, battered spouses and children can get around the bars, if they can show a substantial connection between their unlawful presence and the abuse.

You can also apply for a waiver if you can show that your being prevented from reentering the United States would cause extreme hardship to your U.S. citizen or permanent resident spouse or parent. (Note that having U.S. citizen children won't help here.) The classic case of extreme hardship is if your spouse or parent is very ill, needs your care, and would suffer medically by joining you outside the United States. Note, however, that extreme hardship to you, the immigrant, does not count in this analysis. Some consulates are more generous than others in granting waivers—ask a lawyer for more information, because you'll definitely need a lawyer's help in applying.

Even worse, people who have lived in the United States illegally for more than one year and who then left or were deported but returned to the United States illegally (or were caught trying to) can never get a green card. This is usually referred to as the “permanent bar.” (Check with a lawyer before concluding that you're subject to the permanent bar, however—recent case law has carved out a few exceptions.) No waiver is available.

4. Limitations on Who Can Adjust Status

The rules concerning adjustment of status—or getting your green card in the U.S.—are somewhat complicated. In general, if you entered the U.S. properly—by being inspected by a border official—and maintained your nonimmigrant status, you can probably get your green card without leaving the United States. Most people who marry U.S. citizens can adjust their status even if they have fallen

out of status or worked without authorization, as long as they did not enter without being properly inspected, or as a crewman or stowaway. Those who marry U.S. citizens and who entered without inspection or as crewmen or stowaways need to use a “grandfather clause.” (See Chapter 18.)

Unfortunately, the grandfather clause helps only a few people who happened to be in the United States when certain laws were changed (in particular, a law known as § 245(i)). Under the old laws, practically everyone had the right to stay in the United States to adjust their status, simply by paying a \$1,000 penalty fee. But under the newer laws, paying this fee is no longer an option.

That means that many people who are just becoming eligible for green cards are in a trap. If they stay in the United States, the fact that they entered illegally or committed certain other violations means that they're not allowed to adjust their status to permanent resident within the United States. But if they leave the United States and attempt to apply for their green card through an overseas consulate, they may well face a three- or ten-year bar to returning to the United States, as punishment for their illegal stay.

If you believe you're in this trap, consult a lawyer to make sure and to see if you might qualify for a waiver of the three- or ten-year bar. All refugees or political asylees can stay in the U.S. to adjust status.

Immigrant's Story: Applying for a Waiver

Sandra, from El Salvador, entered the United States in 2003 by hiding under the seat of a friend's van. Four years later, she married Roland, a U.S. citizen, and they settled down in Arizona and had one child. Roland took the first step toward getting Sandra a green card, by filing a visa petition with USCIS on her behalf. Five months later, the petition was approved.

However, Sandra was disappointed to learn that, because she had entered the U.S. illegally, she was not eligible to have her green card interview (the next step in the application process) held in the United States. She would have to return to El Salvador. What was worse, because of her lengthy unlawful presence in the U.S., she would be inadmissible—that is, legally unable to return to the U.S.—for the next ten years.

Sandra and Roland visited a lawyer, who after reviewing their case, explained that Sandra could apply for a waiver of inadmissibility based on showing hardship to Roland, who had some medical problems and would not receive adequate care if he moved to El Salvador with Sandra. However, the lawyer also explained that Sandra would have to go to her interview at the consulate in El Salvador to apply for the waiver—and therefore risk being stuck there for the next ten years if the waiver was denied.

Sandra decided to take a chance. She went to her consular interview, presented the waiver application that the lawyer had helped her prepare, and fortunately was granted the waiver and given an immigrant visa and U.S. green card.

5. Having Committed Crimes Involving Alcohol or Drugs

Criminal grounds of inadmissibility are the number one factor making temporary visa applicants inadmissible, and they affect a lot of green card applicants, too. If you've committed any sort of crime, you may be found inadmissible, and should consult an experienced immigration attorney. Some attorneys specialize in analyzing the significance of criminal convictions in the immigration context.

However, if you've been convicted of a crime involving alcohol, you've got double trouble. Even if the crime itself doesn't make you inadmissible, USCIS can, and often does, argue that it's a sign that you have a physical or mental disorder associated with harmful behavior—in other words, that you're inadmissible on health, rather than criminal, grounds.

This is most often a problem for people with convictions for DUI or DWI (Driving Under the Influence or Driving While Intoxicated). One DUI alone won't always create a problem, unless there were additional factors, such as someone having been injured, your license having been suspended, or your state treating the crime as a felony. But if USCIS sees a "significant criminal record of alcohol-related driving incidents," it will take a closer look. You may be required to undergo an additional examination by the doctor who filled out your medical report, or by more specialized doctors or psychiatrists.

DUIs aren't the only crime that can lead USCIS to find you inadmissible on health grounds. Crimes such as assaults or domestic violence where alcohol or drugs were contributing factors can lead to the same result. Again, see an attorney if this is an issue in your case—and remember that trying to hide crimes on your green card application will only get you in bigger trouble, after the fingerprint or police report reveals them.

6. Suspected of Terrorist Activity

No one will be surprised to hear that the U.S. forbids people who are linked to terrorism to enter the country, and takes an extra hard look at applications from anyone whose government is thought to support terrorism. (The U.S.'s top six suspected countries are Cuba, Iran, Libya, North Korea, Sudan, and Syria.) However, the terrorism-based inadmissibility grounds are broader than you might expect, and have the potential to exclude some people who wouldn't ordinarily be thought of as terrorists.

The inadmissibility grounds cover being a member of a terrorist organization, inciting others to participate in terrorism, persuading others to support terrorism, endorsing terrorism, raising funds for an organization that the U.S. considers terrorist in nature, and more. The

support and fundraising prohibitions can be especially problematic for some people who have given money to organizations that serve a mix of purposes or that have become established political parties despite a terrorist or guerrilla past.

No hard proof or court conviction is necessary—the U.S. government can exclude someone based on having “reasonable grounds to believe” that the person falls into one of the categories described above.

Also, the spouse or child of any immigrant found inadmissible based on the above provisions can be excluded if the immigrant's activities took place within the last five years. To get around this, the spouse or child will need to show that they were not aware of nor could reasonably have been expected to know of the activity. ●

How Long You'll Have to Wait

A. Immediate Relatives of U.S. Citizens: No Waiting	51
B. Relatives in Preference Categories: Longer Waits	51
C. Dealing With the Wait	52
D. Can You Predict How Long You'll Wait?.....	52
1. The Priority Date.....	52
2. Visa Cutoff Date.....	53
3. Some People Can Switch Preference Categories.....	54
4. Advise USCIS If You Can Upgrade.....	54
E. Revocation of a Petition or Application.....	57

As a U.S. citizen, I filed the papers for my brother five years ago. Why is it taking so long for the U.S. Embassy in India to give him his immigrant visa?

My ten-year-old daughter was born in Hawaii, where I was a graduate student at the University of Hawaii. Since she is a U.S. citizen, when can I get a green card by having her claim me as her mother?

Three years ago, based on my green card, I sponsored my wife, who comes from Mexico. She is still waiting for her green card. What is the problem?

These questions are often asked by people who may have expected some delay in getting their green cards, but who can't believe how many years it's taking.

There are three main causes of common immigration delays. The first type of delay no one can escape. It's simply the bureaucratic backup caused by an overworked government agency trying to deal with many thousands of applications every year. Even the amount of time you spend waiting for a decision on one application can be shocking—many months or years is normal. And a fair number of people wait months only to discover that their application got misplaced or lost in the paperwork shuffle. Although USCIS is perpetually launching efforts to fix these problems, no one expects miracles. See Chapters 21 and 22 for tips on preventing and dealing with these delays.

The second type of delay is also tough to avoid: the security checks and double checks your name and fingerprints will be run through, sometimes more than once, during the application process. Although security checks were always part of the application process, they've become more rigorous since the terrorist attacks of September 11, 2001. For people with common names, this can create particular problems. Of course, if you've had any arrests or other history that you believe will raise questions in the immigration process, you should consult an attorney.

The third type of delay applies only to applicants in green card categories that have a yearly limit on how many are given out. For example, spouses of U.S. citizens don't have to worry, because as immediate relatives, the government can grant unlimited numbers of green cards to them, no matter how many apply. But spouses of U.S. permanent residents are less lucky. Their annual limit is 87,934, and far more spouses than that apply every year. Spouses of permanent residents have to wait, usually five years or more, until all the people who applied before them have gotten their green cards. After that, in technical terms, a "visa number" is said to become available, and they can continue their application for a green card.



TIP

"Visa" and "green card" can have similar meanings. When we're talking about numbers and quotas, the immigration laws always refer to "visas" rather than "green cards," for technical reasons. Part of the reason is that if you come from overseas, you don't become a permanent resident (green card holder) until you receive an "immigrant visa" and use it to enter the United States. But even if you're applying within the United States, you can't become a permanent resident until a "visa number" is allotted to you. So, when you hear about numbers and limits on "visas" in this discussion, assume it means your right to a green card, no matter where you're coming from or whether you use an actual, physical entry visa.

You'll face delays based on limited numbers of visas if you apply for a green card in any of the so-called "preference" categories (which we'll explain below). All the preference categories come with limits, or "quotas," on how many visas or green cards can be passed out in a year. And in every preference category, the demand for green cards always seems to exceed the supply.

To make matters more complicated, no country is allowed to send more than 7% of all preference immigrants (or 25,620 people) to the United

States in a year. That means that for certain countries with high rates of immigration to the United States—like Mexico, India, China, and the Philippines—the U.S. government sometimes has to start a separate—and longer—waiting list. This isn't discrimination so much as it is mathematics.

A. Immediate Relatives of U.S. Citizens: No Waiting

Immigrant visas are immediately available for one group of eligible aliens: immediate relatives of U.S. citizens. They have the highest priority in immigration law because of the congressional intent to encourage families of U.S. citizens to live together and stay together.

Members of this group have to wait only for as long as it takes various government offices to handle their applications. This averages from two to twelve months, depending on various factors such as whether the immigrant is coming from another country or already lives legally in the United States, and how backed up the office serving his or her region is.

For purposes of immigration law, you are an immediate relative and eligible for an immigrant visa without waiting if you are:

- the husband or wife of a U.S. citizen
- the parent of a U.S. citizen, if the citizen is at least 21 years of age
- the child under 21 years of age (including stepchildren and children adopted before they reach the age of 16) of a U.S. citizen, or
- the widow or widower of a U.S. citizen who died after living with you for at least two years.

B. Relatives in Preference Categories: Longer Waits

In all family-based preference categories, petitions from U.S. citizens generally have higher priority than those of lawful permanent residents.

Family first preference: unmarried sons or daughters of U.S. citizens. The children must be 21 years old or older and not married—meaning either single, divorced, or widowed. (A son or daughter who is under 21 years old and not married would be classified as an immediate relative.) A maximum of 23,400 immigrant visas are now available worldwide for the family first preference category. The current waiting period is approximately five years, but 14 years if you're from Mexico and 15 years from the Philippines.

Family second preference: spouses and unmarried children of permanent residents. This category is divided into two parts, including:

- husbands and wives of lawful permanent residents and their unmarried children who are under 21 years old (category 2A), and
- unmarried (meaning single, divorced, or widowed) sons or daughters (over 21 years old) of a lawful permanent resident (category 2B, which waits somewhat longer than category 2A).

A total of 114,200 immigrant visas worldwide are given to second preference immigrants. However, 77% (87,934) of the total is intended for the spouses and minor children of green cardholders (2As), while 23% (26,266) of the total is meant for the unmarried children over 21 years of age (2Bs).

The current wait in category 2A is approximately five years, except that applicants from Mexico wait about seven years. In category 2B, the current wait is approximately ten years, except that applicants from Mexico wait about 15 years.

Family third preference: married sons and daughters of U.S. citizens. What if a U.S. citizen's unmarried

son or daughter (in the family first preference category) gets married before entering the U.S. as a lawful permanent resident? Or what if he or she is married already? Either way, the third preference category provides a solution, although the waits tend to be long. Only 23,400 visas worldwide are made available every year for married sons and daughters of U.S. citizens.

The current wait in the third preference category is approximately eight years, except that applicants from Mexico wait about 13 years, and those from the Philippines wait as many as 18 years.

Family fourth preference: brothers and sisters of U.S. citizens. The brother or sister of a U.S. citizen has to wait until the U.S. sibling turns 21 years of age before a petition can be filed for the alien brother or sister. A total of 65,000 visas worldwide are available each year for this category. The waiting list is always very long, from ten to 24 years.

C. Dealing With the Wait

If you belong to a preference category in which there are many hopeful immigrants waiting—for example, in Mexico, there are well over 60,000 brothers and sisters of U.S. citizens on file—you may have to wait several years for your immigrant visa number.

If, during these years, you want to come to the United States as a nonimmigrant—as a tourist, businessperson, student, or other category—the U.S. embassy in your country will probably not approve your visa application. This is because you already have an application on file for an immigrant visa. The U.S. government interprets that latter filing as a statement that you intend to live permanently in the United States—which disqualifies you from most short-term visas.

Of course, there are exceptions to every rule. If you can convince the U.S. consul that you will not remain illegally in the United States waiting for your immigrant visa number to come up, and that

you will return to your country once the period of your nonimmigrant stay is over, you may be granted a nonimmigrant visa. Also, spouses of U.S. citizens may qualify for the newly expanded “K” visa (see Chapter 7).

However, people who qualify for certain temporary work statuses (H and L visas) need not worry about conflicts with their green card application. Although they may have an approved visa petition by reason of their U.S. citizen spouse, child, parent, brother, or sister, or a lawful permanent resident spouse or parent, the U.S. embassy is supposed to issue them an H or L visa if they qualify for that nonimmigrant visa, while waiting for a visa number to become available.

D. Can You Predict How Long You’ll Wait?

No one can tell you for certain how long you’ll wait for a visa or green card. If you’re an immediate relative, you’ll get your best estimate from asking people who work in the office you’re dealing with what the current expected application processing times are. Processing times for certain applications are also posted on USCIS’s website at <https://egov.uscis.gov/cris/jsps/index.jsp>. Choose the office at which your case is pending, and you’ll be given a list of what types of petitions and applications the office handles and what the oldest pending case is for each type at that office. If you are not in the immediate relative category, you can track how long you’re likely to spend on the waiting list if you pay special attention to the priority date and the cutoff date that apply to your visa application.

1. The Priority Date

The priority date is the date on which your relative began the process by filing a petition for you with USCIS (or INS, as it was formerly called) or with the U.S. embassy.

It is very important to keep the receipt of the fee paid to USCIS and the registered mail return receipt card from the post office. The date on the USCIS receipt is the priority date of your application or petition. That date should also be shown on your approval notice, which is the next piece of paper you'll get from USCIS—and which is even more important to keep.



CAUTION

Your relative may wait several years for an answer on the initial visa petition. In 2004, USCIS announced a new policy on handling approvals and denials of Form I-130 visa petitions. Instead of reviewing all petitions in the order received, they began prioritizing those filed on behalf of people whose visas will be available sooner. That means that if you're in a category with long waits, your U.S. citizen or resident relative could receive a receipt notice one year and the approval notice several years later, when it's almost time for you to immigrate. This new policy won't add any delays to your overall wait—it's like having two sources of delay going on simultaneously. It will, however, add uncertainty to your life, since you won't know until the last minute whether the initial visa petition will be approved—or denied.

The Department of State keeps careful count of how many immigrant visas are issued for each country in each preference category. If the quota has been reached in one category before the fiscal

year is over (in October), the department will not issue any immigrant visas in that category for the rest of the fiscal year and will, in addition, state that visas are temporarily unavailable for that category, either for a particular country or worldwide.

October 1 of each year marks the beginning of another fiscal year for the federal government—and the count of the immigrant visas issued begins all over again for each country in each preference category.

2. Visa Cutoff Date

Each month, the Department of State issues a *Visa Bulletin*, which sets out the immigrant visa cutoff date of each visa preference. See the sample below, from November 2007.

The cutoff date simply announces which priority dates in each category are receiving attention from the Department of State because people holding those numbers have become eligible for an immigrant visa. Anyone whose priority date falls before this cutoff date will be given an appointment within a few months if they're overseas, or will be allowed to submit the next part of their application if they're in the U.S. and eligible to adjust status there. Anyone whose priority date falls after the cutoff date will have to wait.

Excerpt from <i>Visa Bulletin</i> for November 2007					
Family	All Chargeability Areas Except Those Listed	CHINA-mainland born	INDIA	MEXICO	PHILIPPINES
1st	08DEC01	08DEC01	08DEC01	01JUN92	22JUL92
2A	15DEC02	15DEC02	15DEC02	01MAY02	15DEC02
2B	15SEP98	15SEP98	15SEP98	15MAR92	22DEC96
3rd	01MAR00	01MAR00	01MAR00	08JUN92	01MAR91
4th	22MAY97	08SEP96	22JUN96	22AUG94	08AUG85

EXAMPLE:

You were born in Poland. Your brother, who is a naturalized U.S. citizen, filed a petition for you on April 2, 1997, which becomes your priority date.

You are in the fourth preference category. The *Visa Bulletin* of November 2007 says the State Department is processing siblings with a priority date on or before May 22, 1997. Your appointment for your immigrant visa is currently available. It doesn't matter that the dates don't match exactly. The point is that people whose visa petitions were filed later than yours are receiving visas, so you should too.

However, if you were from another country, the waiting period could be longer. For example:

If born in:	Fourth preference priority dates being processed in November 2007
China	September 8, 1996
India	June 22, 1996
Mexico	August 22, 1994
Philippines	August 8, 1985

The cutoff dates announced in the *Visa Bulletin* may not change much from one month to the next—sometimes one week for one preference and two weeks for another preference. Or the date may not move at all for several months in your category. Be prepared to wait.

The *Visa Bulletin* is normally available in each embassy or consulate, or in USCIS offices. You can also call the Department of State in Washington, DC, at 202-663-1541 for a tape-recorded message that gives the cutoff dates for each preference category being processed that month. Or, visit the State Department website at www.state.gov. Click “Travel and Business,” then “Visa Bulletins.” You can even subscribe to an email service that will automatically send you the latest *Visa Bulletin* every month as it becomes available! Details about how to do this can be found at the bottom of the bulletin itself.

3. Some People Can Switch Preference Categories

A special rule applies to family-based immigrant visas, allowing you to hang onto your priority date if you change from one preference category to another.

If you belong to one family preference, and some event (marriage, divorce, death of spouse, or the simple passage of time) places you in a different preference category, your original priority date may remain unchanged. That means you won't lose much ground, since your place on the new waiting list will reflect the fact that your petition was filed long before many other people's.



CAUTION

Some life changes make you ineligible for any visa at all. Not everyone who marries, divorces, or whose petitioning family member dies can switch to another preference category. You can switch only if, at the time, an existing category fits your new situation. So, for example, the child of a U.S. citizen who marries can switch to the third preference category. But the child of a lawful permanent resident who marries is out of luck, because there's no category for married children of permanent residents. Such issues are explained further in Section E, below.

4. Advise USCIS If You Can Upgrade

If you can switch to a better visa category—most likely because the person petitioning for you has gone from being a permanent resident to being a U.S. citizen—you'll need to let USCIS know.

How you do that depends first on where your file is currently located. If, for example, your Form I-130 visa petition is still pending at a USCIS service center, you'll want to send a letter titled “I-130 UPGRADE REQUEST” identifying you and the petitioner and explaining the situation (see the sample below). Also be sure to include a copy of the petitioner's signed naturalization certificate.

Sample Request for Upgrade

123 Central Avenue
Treesbird, VT 14235

April 14, 2008

Department of Homeland Security
U.S. Citizenship and Immigration Services
P.O. Box 648005
Lee's Summit, MO 64064

RE: I-130 UPGRADE REQUEST
Petitioner: Samuel Thornburgh
Beneficiary: Junyi Cho

Dear Sir/Madam:

I filed an I-130 visa petition for the above-named beneficiary on February 11, 2008, during which time I was a U.S. permanent resident. That petition is still pending.

Since filing the petition, however, I have become a naturalized U.S. citizen. A copy of my naturalization certificate is attached.

Please continue processing this case, but as an immediate relative petition. Thank you for your attention to this matter.

Very truly yours,

Samuel Thornburgh

Enclosed: copy of naturalization certificate

If the I-130 visa petition has already been approved, and the beneficiary is living outside the U.S., you'll need to send a similar letter to:

Department of State
National Visa Center
32 Rochester Avenue
Portsmouth, NH 03801.

And if the beneficiary is living in the U.S. and is eligible to adjust status, you don't need to send a letter anywhere. You simply submit the full adjustment of status application with a copy of the I-130 approval and the naturalization certificate.

Immigrant Story: Uniting the Family

Here is how the quota system affected Giti, a 19-year-old immigrant woman from Afghanistan.

After waiting for over ten years, Giti's father was about to get a green card through his U.S. citizen brother. He planned to bring his wife and three children with him, as is allowed in this visa category (family fourth preference). However, the family didn't realize that the children must remain unmarried and under age 21 all the way until the date they enter the United States. Just before the visa interview, Giti married a man from their town in Afghanistan. Her eligibility for the green card was destroyed.

What should they do next? Although it will take a long time, Giti's best bet is for her father to learn English and become a U.S. citizen as soon as possible (this will normally take at least five years). Next, he'll need to petition for her and her husband under the family third preference category. They'll wait approximately seven years before being allowed to immigrate to the United States.

Giti's father wonders whether Giti shouldn't just divorce the young man. However, that would be considered immigration fraud, if done just to allow her to get a green card. If the immigration authorities found out about the fraud, it would destroy her eligibility for any green card in any category.

Situations Where You Automatically Convert to Another Visa Category With Your Original Priority Date

- Marriage of the son or daughter (over 21 years old) of U.S. citizen—moves down from first to third preference.
- Marriage of child (under 21 years old) of U.S. citizen—moves down from immediate relative to third preference.
- Divorce of child or son or daughter—moves up from third preference to immediate relative or first preference, depending on child's age at divorce.
- Naturalization of legal resident petitioner—moves up from second preference to immediate relative (if applicant is under 21 years old) or first preference (if applicant is over 21 years old).
- Child of lawful permanent resident reaching age 21 before priority date becomes current—drops from category 2A to category 2B of the second preference. However, if the child reaches age 21 after his or her priority date has become current but before he has actually been approved for permanent residency, the child can retain 2A status as long as he or she applies within one year of the priority date having become current. (This represents a change in the law, as of 2002—formerly such children would have also dropped into category 2B, simply by virtue of not having received their approval on time, and therefore had to wait longer.)

Situations Where Children Are Protected From Switching Categories

The Child Status Protection Act of 2002 allows certain children of U.S. citizens and permanent residents to retain their original visa eligibility even if they turn 21 while they're waiting for the process to finish up. (Formerly, turning 21 would have automatically dropped them into a lower preference category and caused them to have to wait longer for their visa or green card.) Those who benefit include:

- Children of U.S. citizens—will retain immediate relative status even if they turn 21 at any time after a visa petition has been filed on their behalf.
- Children of lawful permanent residents—will retain 2A status if they turn 21 after their priority date has become current, so long as they file for a green card within one year of becoming current. (Technically, by filing for the green card the child “locks in” his or her age at 21 minus the number of days it took USCIS to approve the initial I-130 visa petition. However, given USCIS delays, that almost always shaves off enough months to keep the child's age, for immigration purposes, at less than 21.)

These rules may sound technical and a little hard to follow, but because they can make a big difference in how quickly your application is processed, it is worth your time to understand which rules apply to your situation.

EXAMPLE:

Your mother, a permanent resident, filed a family second preference petition for you as her unmarried son. But she has recently been naturalized as a U.S. citizen, so you could now move into the family first preference as the unmarried son of a U.S. citizen. If the visa cutoff

date for the family first preference is closer to your priority date than the cutoff date for the family second preference, you can now receive your immigration visa more quickly.

EXAMPLE:

A visa application is filed for the teenage daughter of a U.S. citizen. When she turns 21 and her priority date has not yet become current, she moves into the first preference category but keeps the priority date assigned to the immediate relative petition filed by her American parent.

You must always tell the U.S. embassy or USCIS about this conversion of your preference category and your right to keep your old priority date. Write a letter with copies of the documents to prove your change of preference category. For example, if you're moving up because your spouse or parent became a citizen, include a copy of the signed naturalization certificate. Also, enclose a copy of your previously approved petition (or receipt notice if you haven't yet been approved) to show your old priority date.

If your I-130 application is still pending at a service center, check on its procedures—you may be able to email your request.

E. Revocation of a Petition or Application

Here is a bit of scary information, but it's better to know it than not to know: After a petition or application has been filed on behalf of an alien, it can be revoked or canceled—even if it has already been approved by the INS or USCIS. This is usually based on a change in circumstances that makes the immigrant no longer eligible, but it can also be based on fraud.

USCIS will normally revoke a petition if, for example:

- the person who filed the petition decides to withdraw it and informs USCIS of this decision
- the person who filed the petition dies. However, USCIS may decide not to revoke the petition if it is convinced that there are “humanitarian reasons” not to do so.
- in a marriage case, the couple divorces or the marriage is annulled before the green card is approved, or
- in a family second preference case, the unmarried son or daughter gets married before the green card is approved.

Special Rules for Widows and Widowers

If the beneficiary is the spouse of a U.S. citizen, and the couple was married for at least two years, the petition will be granted as long as the widowed beneficiary applies within two years of the spouse’s death and has not remarried.

Consider this scenario: A permanent resident mother has brought all her children to the United States except her eldest son, who marries before she could petition for him. After five years, she becomes a U.S. citizen and immediately files a petition for her married son, still living in the foreign country. The petition is approved, but before the son and his family come to the United States, the mother dies. The petition is automatically revoked, and the son remains separated from his brothers and sisters, who

have been living in the United States since their mother received her green card.

That application of the regulations seems cruel. It is precisely for such cases that the regulations have been somewhat liberalized. The beneficiary of a petition filed by a U.S. citizen or by a permanent resident who dies before the alien beneficiary could come to the United States is no longer in an entirely hopeless situation.

With a lawyer’s help, you may be able to show the immigration authorities that for “humanitarian reasons” revocation would be inappropriate. There is, however, a catch: Because every immigrant to the United States must have a financial sponsor—that is, someone who promises to support the immigrant if he or she is unable to support him or herself—you will need to find a substitute sponsor for the person who died. Only certain people can fill this substitute role, including your spouse, parent, mother-in-law, father-in-law, sibling, son, daughter, son-in-law, or daughter-in-law. As in the case of other sponsors, your sponsor must maintain an annual income equal to at least 125% of the federal poverty guidelines.

But you can always try the indirect approach. A little help from a U.S. representative or senator who can intercede on your behalf may prove effective. Call the office of your representative or senator and get the name of the aide in that office who is responsible for handling immigration matters. Write him or her a letter summarizing why he or she should intercede on your behalf with USCIS. This approach may be a long shot, but it may be your last hope. ●

Fiancé and Fiancée Visas

A. Who Qualifies for a Fiancé Visa.....	60
1. You Must Intend to Marry a U.S. Citizen.....	60
2. You Must Have Met in Person Within the Last Two Years.....	60
3. You Must Be Legally Able to Marry.....	61
B. Quick View of the Fiancé Visa Application Process.....	61
C. Detailed Instructions for the Fiancé Visa Application Process.....	62
1. Documents Required for Fiancé Visa Petition	62
2. Where and How to Send the Fiancé Visa Petition	63
3. Visa Petition Interviews.....	63
4. U.S. Consulate Notified of Approval	63
5. Interview at the Embassy	64
6. At the Border	65
7. Permission to Work in the U.S.....	65
D. How to Bring Your Children on a Fiancé Visa	66
E. Marriage and After	66

The fiancé visa (K-1) was designed to allow people who've become engaged to but haven't yet married a U.S. citizen to travel to the U.S. for the wedding. Unfortunately, it isn't available to the fiancés of U.S. permanent residents (green card holders). Your minor children can go with you to the U.S. After the wedding, you and your children can either apply for a green card or return home—but must do one or the other within 90 days.



SKIP AHEAD

If you're already married, see Chapter 7 for how you can speed things up by using a fiancé visa. Using a fiancé visa to get to the United States is a legitimate way to speed up the process if you're already married. You'll need to first learn the procedural details, however; see Chapter 7, then refer back to this chapter for information on filling out the relevant forms.

A. Who Qualifies for a Fiancé Visa

To qualify for a fiancé visa, you must:

- intend to marry a U.S. citizen (see Section 1, below)
- have met your intended spouse in person within the last two years (though this can be waived based on cultural customs or extreme hardship; see Section 2, below), and
- be legally able to marry (see Section 3, below).

It's important to realize that a fiancé visa is not a green card. It's only a temporary, 90-day right to be in the United States. However, it's included in this book because it's an important first step towards getting a green card. After the immigrant has arrived in the United States and gotten married, he or she can file for a green card—through a process called “adjustment of status”—at a U.S.-based USCIS office. (Or, if the immigrant has no desire for a U.S. green card, he or she can simply return home before the fiancé visa runs out.)

1. You Must Intend to Marry a U.S. Citizen

Of course you want to get married—but how do you plan to prove that to the U.S. government? As part of your application, you'll have to supply proof that you've made actual plans, such as a place, a day, a type of ceremony or proceedings (even if it's only in front of a judge), and more. We'll talk more about this in the sections that discuss paperwork.



TIP

Make your wedding plans flexible. You can't know exactly how long it will take to get a fiancé visa, but you'll have to hold your wedding within 90 days of entering the United States. Before you sign any contracts for catering, photographic, or other services, discuss the situation with the service providers and build some flexibility into your contracts or agreements in case the date needs to change.

The person you plan to marry must be a citizen, not a permanent resident, of the United States. A U.S. citizen is someone who was:

- born in the United States or its territories
- became a citizen through a process of application and testing (called “naturalization”), or
- acquired or derived citizenship through a family member (for more information, see Nolo's website at www.nolo.com; look for the article entitled “U.S. Citizenship by Birth or Through Parents”).

2. You Must Have Met in Person Within the Last Two Years

To protect against sham marriages, the law requires that you and your fiancé have met in person within the last two years. Even a brief meeting may be enough. Perhaps the immigrant can visit the United States on a tourist visa. However, getting approval for a tourist visa may be difficult, because the U.S. consulate may believe that the immigrant

actually intends to get married and apply for the green card right away—which would be a misuse of the tourist visa, and could amount to visa fraud. It will probably be easier for the U. S. citizen to visit the immigrant overseas.

If, however, you're from a country where prospective husbands and wives don't meet before the wedding, for religious or cultural reasons, this meeting will obviously be a greater hardship. In such cases, you can ask the immigration authorities to "waive" (overlook) the meeting requirement. You'll need letters from your religious leader, parents, or other relevant people, and other proof of the normal practices in your culture, to succeed with your request. Getting a lawyer's help would be a good idea here.

U.S. Citizen Petitioners Must Now Disclose Criminal Records

Recently Congress became concerned that immigrating fiancés were particularly susceptible to domestic violence and abuse—particularly those whose engagements were arranged through a marriage broker (sometimes called "mail order brides"). In response, Congress passed the International Marriage Brokers Regulation Act of 2005 (IMBRA). As a result of IMBRA, the fiancé visa petition (Form I-129F) now asks *all* U.S. citizen petitioners whether they have a history of violent crime and crime relating to alcohol or controlled-substance abuse. In addition, Form I-129F now asks whether you and your fiancé or spouse met through an international marriage broker. If you did, the immigrant will be asked, at the visa interview, whether the broker complied with new legal requirements that he or she collect information on the U.S. fiancé or spouse's criminal record and pass it to the immigrant.

3. You Must Be Legally Able to Marry

For most people, the requirement that you be legally able to marry won't pose any problems. However, if one of you is already married or too young to legally marry in the state or country where you plan to perform the wedding, or if the two of you are close relatives, such as cousins, and forbidden to marry in the state or country where you plan to hold the wedding, you may not qualify for a fiancé visa.

If possible, take steps to correct the problem—for example, obtain a divorce, figure out a different place to marry, or wait until you're older.

B. Quick View of the Fiancé Visa Application Process

Here's what to plan for on your path to a fiancé visa:

1. The U.S. citizen submits a fiancé visa petition to USCIS (on Form I-129F).
2. USCIS sends the U.S. citizen a receipt notice, after confirming that the application is complete, then (within weeks or months) a notice of its decision, hopefully approving the petition. (Occasionally, USCIS will call in the U.S. citizen petitioner for an interview before deciding on the petition.)
3. USCIS will transfer the file to an intermediary called the National Visa Center (NVC), which then transfers it to the U.S. consulate serving the immigrant's country. The consulate will instruct the immigrating fiancé on what documents to prepare, and schedule a visa interview.
4. The immigrating fiancé attends the interview, and if all goes well, is approved for a fiancé visa. The visa will usually need to be picked up on a separate day. The immigrant must use it to enter the U.S. within six months.

C. Detailed Instructions for the Fiancé Visa Application Process

All the immigration forms required and prohibitions explained here are very unromantic. But because the immigration laws have been abused by people who used marriage simply to obtain a green card, romance takes a backseat when it comes to immigration procedures. Obtaining a fiancé visa—also called a K-1 visa—requires time, patience, and paperwork.

1. Documents Required for Fiancé Visa Petition

To start the process, the U.S. citizen must prepare the following:

- ❑ Form I-129F, Petition for Alien Fiancé(e). (See the sample at the end of this chapter.)
- ❑ Separate passport-style color photographs of the U.S. citizen and the alien fiancé.
- ❑ Form G-325A, Biographic Information, one for each person. (See the sample at the end of this chapter.)
- ❑ Proof of your U.S. fiancé's U.S. citizenship, such as a copy of a passport, birth certificate, or naturalization certificate (see Chapter 22, Section D3 for details).
- ❑ Proof that any previous marriages have been terminated by death, divorce, or annulment.
- ❑ Written affidavit from the U.S. citizen stating how the couple met, how they decided to get married, and the plans for the marriage and the honeymoon (see the sample at the end of this chapter).
- ❑ Written affidavit from the immigrating fiancé also discussing their relationship and their intention to marry.
- ❑ Proof that the U.S. citizen and the foreign-born fiancé have met each other within the

past two years: photographs, plane tickets, letters, etc.

- ❑ If the U.S. citizen has ever been convicted of any violent crime, or a crime involving domestic violence or substance abuse (a more complete list is provided in the instructions to Form I-129F), certified copies of all police and court records showing the outcome (get a lawyer's help in this instance).

Immigrant Story: Proving They'd Met

Doug, from Ireland, and Carol, a U.S. citizen, met online and exchanged emails for over a year before they decided to get married. However, Carol was living with her parents in Philadelphia while she finished her PhD in medieval history, and her family was extremely protective. She knew they would have panicked at the idea of her so much as corresponding with a stranger online, much less marrying him.

So although Carol definitely wanted to meet Doug before the wedding, she decided a secret meeting would be best. When a history conference took her to Newark, New Jersey, she suggested to Doug that he meet her there. They stayed with friends of Carol's, had a great time, and reaffirmed their intention to marry.

Then came time to prove that they'd met the meeting requirement. Carol suddenly realized she had almost no proof of their meeting. She'd driven to Newark, hadn't paid for a hotel room, and eaten either conference food or in her friends' kitchen the whole time. But after thinking harder, she realized she'd paid for gas with a credit card while in New Jersey, and had a registration form proving that she'd been at the conference. She also asked her friends to sign a sworn statement explaining that she and Doug had stayed with them. This, plus proof of Doug's plane ticket, was enough to satisfy the meeting requirement, and Doug was granted a fiancé visa.

- ❑ Proof that the two of you intend to marry within 90 days after the alien fiancé arrives in the United States: letters, long-distance telephone bills, letter from the religious or civil authority who will officiate at the wedding, letter from the place where the reception will be held, and engagement or wedding announcement or invitation.
- ❑ Filing fee (currently \$455), payable to the U.S. Department of Homeland Security, in the form of a money order or bank check. (You do not, however, have to pay the fee if you're already married and filing Form I-129F after filing a Form I-130 in order to obtain a K-3 visa, as described in Chapter 7.)

2. Where and How to Send the Fiancé Visa Petition

Once the U.S. citizen petitioner has prepared everything on the above list, he or she should make two complete photocopies of everything, including the check or money order. This will be extremely important in the all-too-common event that USCIS misplaces the petition. Send one copy to the immigrating fiancé, for his or her records. The U.S. citizen should assemble the original package neatly, and preferably write a cover letter that lists, in bullet points, everything inside.

The petitioner should send the completed visa petition by certified mail, return receipt requested, to the appropriate USCIS Service Center. (See the USCIS website for contact details; make sure to get the right P.O. box.) You *cannot* just walk the form into your local USCIS office.

3. Visa Petition Interviews

The U.S. citizen petitioner may be called in for an interview by a USCIS officer. He or she should bring all original documents to the interview. If the documents and the interview convince USCIS that true romance is behind the planned marriage, the petition will be approved and a Notice of Action,

Form I-797, will be mailed to the U.S. citizen. The form will contain instructions for the next step to take—and may include a request for additional information or documentation.

4. U.S. Consulate Notified of Approval

After USCIS approves the Form I-129F visa petition, it will advise a processing unit called the National Visa Center (NVC). The NVC will send you, the immigrating fiancé, a packet of forms. Follow the instructions and fill out the appropriate forms right away, and send them to the U.S. consulate indicated in the instructions. The forms usually include DS-230 Part I, DS-156, and DS-156K.

The forms are mostly pretty simple, asking for biographical information. See the samples at the end of this chapter, but realize that the ones you receive may look a little different. Some consulates customize the forms, for example adding language for the country they're in.

Some of these forms are used for other types of visas—don't be concerned, for example, with questions about whether you plan to work or study in the United States. Though this would be against the rules for people on visitor visas, it's okay for you, on a fiancé visa.

After the consulate receives and reviews your forms, it will send you a packet including an appointment date, additional forms, and instructions for completing the fiancé visa application process.

If you don't live in the same city as the consulate, you may want to arrive a couple of days before your actual interview. This will give you time to have the medical exam done and receive the results (if no doctors closer to your home were on the consulate's list). Also check out the situation around the consulate itself. Often, there are long lines, so you'll need to arrive well before your appointment time and expect to be let in long after.

What You'll Need for Your Consular Interview

You can start gathering many of the documents required by the U.S. embassy in advance so that you are ready to proceed with the case as soon as you're notified.

The forms and documents you'll eventually need include:

- ☐ Form DS-230 Part II, "Sworn Statement." This is a fairly short form, which asks you, in a series of detailed questions, whether you fall into any of the grounds of inadmissibility (described in Chapter 4). If you need to answer yes to any of the questions, consult a lawyer.
- ☐ a current passport for yourself and for all of your unmarried children under 21 years of age, if they are coming with you or following you to the United States
- ☐ original and photocopied birth certificates for yourself and all children mentioned above, with English translations
- ☐ originals and photocopies of documents to prove termination of any previous marriage (death certificate, divorce decree, annulment decree), with English translations
- ☐ police clearance from all places you have lived for more than six months (except from the United States, where USCIS gathers the information)
- ☐ originals of all documents, copies of which were submitted by your U.S. citizen fiancé with Form I-129F (see the sample at the end of this chapter) to confirm your relationship and show your eligibility for the visa
- ☐ three passport-style photographs of yourself and each of any children applying with you for a visa (see Chapter 22, Section E for detailed photo requirements)
- ☐ report of your own medical examination and those of all children over 14 years of age to verify that you've had all your vaccinations and no one has a communicable disease (wait for the consulate to send you forms and instructions on which doctors do these examinations), and
- ☐ Form I-134, Affidavit of Support, filled out by your U.S. citizen fiancé. (See the sample at the end of this chapter.)

5. Interview at the Embassy

The U.S. embassy or consulate will schedule the immigrating fiancé for an interview. You should bring all the forms and documents listed in the consulate's instructions and under "What You'll Need for Your Consular Interview," above. There will be an application fee of \$131 per person.

Form I-134. One of the most important items will be Form I-134, Affidavit of Support, along with proof that the U.S. petitioner is willing and able to take financial responsibility for the immigrant. See the sample Form I-134 toward the end of this chapter—and note that the sample shows what the form would look like before taking it to a notary

public for signing, which is a required part of the process. In support of this form, the citizen should add copies of his or her:

- ☐ bank statements
- ☐ recent tax returns and W-2s
- ☐ employment verification (make this an original letter from the employer detailing salary, hours, and whether the position is temporary or permanent), and
- ☐ documents showing the value of any of the following property, if owned: bonds and stocks, real estate, and mortgage information or life insurance.

Medical exam. The immigrating fiancé will also need to have a medical exam done. The fiancé can't just go to the family doctor, but will have to go to a clinic specified by the consulate. The doctor will do an exam, ask questions about medical history and drug and alcohol use, take X-rays, and withdraw blood. The fiancé will be asked to show records of having received all appropriate vaccinations, and will have to get any vaccinations that are lacking. The cost is usually around \$300.

Forms for children. Most of the forms and documents must be separately filled out for you and for any minor children who will also be going to the United States.

Security checks. Because of new and increased security procedures, it is unlikely that you will receive your visa on the same day as you attend your interview. It can take several weeks for the consulate to run security checks on you—and even longer if you come from a country that the United States suspects of supporting terrorism.

Approval. If the U.S. consular official is ultimately convinced that you and your U.S. citizen fiancé are truly engaged to be married and will marry upon your arrival in the United States, and that you aren't barred from entry for any of the reasons described in Chapter 4, your passport will be stamped with the K-1 visa. The passports of your accompanying minor children will be stamped with the K-2 visa, meaning that they are dependent upon you for their immigration status.



TIP

If you're already married but are applying for a K-3 fiancé visa, most of the advice in this section regarding the visa interview applies to you, too.

However, you won't have to worry about convincing anyone that you plan to get married! Your main task will simply be to show that your paperwork is in order, with the understanding that you will complete the green card application after you've arrived in the United States.

The fiancé visa is considered a nonimmigrant visa because you are simply promising to marry a U.S. citizen. You are not yet an immigrant.

6. At the Border

Once you receive your fiancé visa, you'll have six months to use it to enter the United States. At the U.S. port of entry, the border officer will examine the contents of your visa envelope and ask you a few questions. Be careful with this—if the officer spots a reason that you should not have been given the fiancé visa, he or she has the power to deny your entry right there. You would have no choice but to find a flight or other means of transport home. And you might not be allowed back for five years (unless the officer allows you to withdraw the application before it's officially denied, which is entirely at the officer's discretion).

Assuming all goes well, the border officer will stamp your passport with your K-1 fiancé visa status, and give you a small white I-94 card showing the 90-day duration of your status.

7. Permission to Work in the U.S.

When you arrive in the United States, you can apply at once for an Employment Authorization card that will enable you to work legally. The proper paperwork to complete for this is Form I-765. (See the USCIS website, www.uscis.gov.)

However, you'll have to submit your application to a USCIS Service Center, and the service centers are famous for delays of many months. Submitting this application may not be worth the effort since the maximum time the work permit will be good for is three months (based on the length of your fiancé visa). You may be better off getting married, then submitting your green card application together with an application for a work permit. This allows you more time to work before the card expires (it will last for approximately one year).

D. How to Bring Your Children on a Fiancé Visa

Your unmarried children under age 21 are eligible to accompany you on your fiancé visa and apply for green cards after you're in the United States and you have gotten married. This includes biological as well as adopted children. All you have to do at the beginning of the fiancé visa application process is to include your children's names on question 14 of the fiancé visa petition (Form I-129F). The consular officials will then send you extra sets of the required forms for the children to fill out. (If they forget, contact them.) For young children, it's okay for you to fill out these forms on their behalf. Just sign your name, then write "Parent of [*name of your child*]."

Your children will probably be asked to attend your consular interview with you, although some consulates let younger children stay home. The technical name of their visa will be K-2. For the visa interview, they'll normally be asked to bring:

- ☐ filled-out forms provided by the consulate
- ☐ birth certificate (original and photocopy, with English translation)
- ☐ police record (if the child is over age 16)
- ☐ passport (unless your country permits the child to be included on your passport)
- ☐ four photos, and
- ☐ medical exam results.

Even if your children don't accompany you when you first enter the U.S. as a fiancé, they can join you under the same visa for a year after yours was approved. Just make sure they remain unmarried and under the age of 21. They'll need to contact the U.S. consulate for forms and an interview. If they don't plan to immigrate with you, but want to attend your wedding, their other option is a visitor visa.

When it comes time to apply for green cards, you and your children will each have to submit a separate application, before each of your visas expires.



TIP

Don't let anyone tell you that your child needs to have been under 18 when you were married.

Some USCIS officers get confused when dealing with K-2 applicants for adjustment of status, and expect them to meet the standards for stepchildren that apply to certain other applicants. The confusion is common enough that USCIS sent out a general reminder memo to all of its offices in 2007. The bottom line: So long as your K-2 child is under 21 (and unmarried), and you've gotten married to your U.S. citizen petitioner, the child can apply to adjust status and get a green card.

E. Marriage and After

You must marry within 90 days after arriving in the United States. It's best to get married as soon as possible after you arrive. That's because you've got only 90 days to apply for your green card; and at that time, you'll have to prove to USCIS that you really got married. USCIS won't accept a mere church certificate—it needs the official marriage certificate prepared and stamped by your local government office. However, it can take your local government several weeks to prepare this certificate and get you a copy, so plan ahead.

If you cannot get married because of some emergency or circumstances beyond your control, you must submit an affidavit to USCIS stating the reasons for the delay and request an extension of time to marry.

If you fail to marry your U.S. citizen fiancé at all, USCIS can start removal (deportation) proceedings against you and all children who came with you on a fiancé visa.

If you marry someone other than your U.S. citizen fiancé, you will lose your right to receive your green card in the United States—and so will all of your minor children who are attempting to immigrate with you.

If you do marry your U.S. citizen fiancé within 90 days, there is one more important step you must take in order to get a green card. You must file for adjustment of status (see Chapter 18), for yourself and all your minor children who came on the fiancé visa.

**CAUTION**

Beware of the two-year time limit. Going through the adjustment of status procedure will give you and your minor children conditional permanent residence status, and you will acquire a green card that is valid for only two years. To make it a permanent green card after the two years, follow the procedures for conditional permanent residents laid out in Chapter 7.

Petition for Alien Fiancé(e), Sample Form I-129F (page 1)

OMB No. 1615-0001; Expires 01/31/2010

Department of Homeland Security
U.S. Citizenship and Immigration Services**I-129F, Petition
for Alien Fiancé(e)**

Do not write in these blocks.		For USCIS Use Only
Case ID # A # G-28 # The petition is approved for status under Section 101(a)(5)(k). It is valid for four months from the date of action. _____	Action Block Remarks:	Fee Stamp AMCON: _____ ☐ Personal Interview ☐ Previously Forwarded ☐ Document Check ☐ Field Investigation

Part A. Start Here. Information about you.

1. Name (Family name in CAPS) (First) (Middle)
 BEACH Sandra Leah

2. Address (Number and Street) Apt. #
 114 Fulton Street 6E
 (Town or City) (State or Country) (Zip/Postal Code)
 New York New York 10038

3. Place of Birth (Town or City) (State/Country)
 Horseheads New York

4. Date of Birth (mm/dd/yyyy) 5. Gender
 12/20/1982 ☐ Male ☒ Female

6. Marital Status
☐ Married ☒ Single ☐ Widowed ☐ Divorced

7. Other Names Used (including maiden name)
 None

8a. U.S. Social Security Number 8b. A# (if any)
 123-45-6789 n/a

9. Names of Prior Spouses Date(s) Marriage(s) Ended
 None n/a

10. My citizenship was acquired through (check one)
☒ Birth in the U.S. ☐ Naturalization
 Give number of certificate, date and place it was issued.

☐ Parents
 Have you obtained a certificate of citizenship in your name?
☐ Yes ☐ No
 If "Yes," give certificate number, date and place it was issued.

11. Have you ever filed for this or any other alien fiancé(e) or husband/wife before?
☐ Yes ☒ No
 If "Yes," give name of all aliens, place and date of filing, A# and result. (Attached additional sheets as necessary.)

Part B. Information about your alien fiancé(e).

1. Name (Family name in CAPS) (First) (Middle)
 Hollis Nigel Ian

2. Address (Number and Street) Apt. #
 123 Limestone Way 7
 (Town or City) (State or Country) (Zip/Postal Code)
 Penzance U.K. TR197NL

3a. Place of Birth (Town or City) (State/Country)
 Port Navas U.K.

3b. Country of Citizenship
 U.K.

4. Date of Birth (mm/dd/yyyy) 5. Gender
 08/17/1980 ☒ Male ☐ Female

6. Marital Status
☐ Married ☐ Single ☐ Widowed ☒ Divorced

7. Other Names Used (including maiden name)
 None

8. U.S. Social Security # 9. A# (if any)
 n/a none

10. Names of Prior Spouses Date(s) Marriage(s) Ended
 Jane Simpson 5/20/2005

11. Has your fiancé(e) ever been in the U.S.?
☒ Yes ☐ No

12. If your fiancé(e) is currently in the U.S., complete the following:
He or she last arrived as a: (visitor, student, exchange alien, crewman, stowaway, temporary worker, without inspection, etc.)

Arrival/Departure Record (I-94) Number

Date of Arrival (mm/dd/yy) Date authorized stay expired, or will expire as shown on I-94 or I-95

INITIAL RECEIPT _____ RESUBMITTED _____ RELOCATED: Rec'd. _____ Sent _____ COMPLETED: Appv'd. _____ Denied _____ Ret'd. _____

Form I-129F (Rev. 07/30/07) Y

Sample Form I-129F (page 2)

Part B. Information about your alien fiancé(e). (Continued.)**13. List all children of your alien fiancé(e) (if any)**

Name (First/Middle/Last)	Date of Birth (mm/dd/yyyy)	Country of Birth	Present Address
None			

14. Address in the United States where your fiancé(e) intends to live.

(Number and Street)

(Town or City)

(State)

114 Fulton Street

New York

NY

15. Your fiancé(e)'s address abroad.

(Number and Street)

(Town or City)

(State or Province)

123 Limestone Way

Penzance

Cornwall

(Country)

(Phone Number; Include Country, City and Area Codes)

U.K.

1234 123456

16. If your fiancé(e)'s native alphabet uses other than Roman letters, write his or her name and address abroad in the native alphabet.

(Name)

(Number and Street)

n/a

(Town or City)

(State or Province)

(Country)

17. Is your fiancé(e) related to you?☐ Yes ☒ No

If you are related, state the nature and degree of relationship, e.g., third cousin or maternal uncle, etc.

18. Has your fiancé(e) met and seen you within the two-year period immediately preceding the filing of this petition?☒ Yes ☐ No

Describe the circumstances under which you met. If you have not personally met each other, explain how the relationship was established. If you met your fiancé(e) or spouse through an international marriage broker, please explain those circumstances in Question 19 below. Explain also in detail any reasons you may have for requesting that the requirement that you and your fiancé(e) must have met should not apply to you.

See attached statement.

19. Did you meet your fiancé(e) or spouse through the services of an international marriage broker?☐ Yes ☒ No

If you answered yes, please provide the name and any contact information you may have (including internet or street address) of the international marriage broker and where the international marriage broker is located. Attach additional sheets of paper if necessary.

20. Your fiancé(e) will apply for a visa abroad at the American embassy or consulate at:

(City)

(Country)

London

England

NOTE: (Designation of a U.S. embassy or consulate outside the country of your fiancé(e)'s last residence does not guarantee acceptance for processing by that foreign post. Acceptance is at the discretion of the designated embassy or consulate.)

Sample Form I-129F (page 3)

Part C. Other information.**1. If you are serving overseas in the Armed Forces of the United States, please answer the following:**

I presently reside or am stationed overseas and my current mailing address is:

--	--

2. Have you ever been convicted by a court of law (civil or criminal) or court martialled by a military tribunal for any of the following crimes:

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse or stalking. (Please refer to page 3 of the instructions for the full definition of the term "domestic violence.")
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment or an attempt to commit any of these crimes, or
- Three or more convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

☐ Yes ☐ No

Answering this question is required even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. Using a separate sheet(s) of paper, attach information relating to the conviction(s), such as crime involved, date of conviction and sentence.

3. If you have provided information about a conviction for a crime listed above and you were being battered or subjected to extreme cruelty by your spouse, parent, or adult child at the time of your conviction, check all of the following that apply to you:

- ☐ I was acting in self-defense.
- ☐ I violated a protection order issued for my own protection.
- ☐ I committed, was arrested for, was convicted of, or plead guilty to committing a crime that did not result in serious bodily injury, and there was a connection between the crime committed and my having been battered or subjected to extreme cruelty.

Part D. Penalties, certification and petitioner's signature.

PENALTIES: You may by law be imprisoned for not more than five years, or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws, and you may be fined up to \$10,000 or imprisoned up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

YOUR CERTIFICATION: I am legally able to and intend to marry my alien fiancé(e) within 90 days of his or her arrival in the United States. I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.

Moreover, I understand that this petition, including any criminal conviction information that I am required to provide with this petition, as well as any related criminal background information pertaining to me that U.S. Citizenship and Immigration Services may discover independently in adjudicating this petition will be disclosed to the beneficiary of this petition.

Signature

Sandra L. Beach

Date (mm/dd/yyyy)

08/02/2008

Daytime Telephone Number (with area code)

212-555-1212

E-Mail Address (if any)

sandrab@email.com

Part E. Signature of person preparing form, if other than above. (Sign below.)

I declare that I prepared this application at the request of the petitioner and it is based on all information of which I have knowledge.

Signature

Print or Type Your Name

G-28 ID Number

Date (mm/dd/yyyy)

Firm Name and Address

Daytime Telephone Number (with area code)

E-Mail Address (if any)

Sample Fiancé Meeting Statement—Attachment to form I-129F

Filed by Sandra Beach on Behalf of Nigel Hollis

Question 18

I met my fiancé 18 months ago, while visiting a college friend who has settled in England. My friend Carrie had been telling me for months that she wanted to introduce me to Nigel, because of our offbeat senses of humor and shared interest in long-distance swimming. I've had bad experiences with friends trying to set me up before, so I didn't take it very seriously. But when vacation plans took me to England, I let her arrange for me and Nigel to meet over lunch at a pub.

To my amazement, we clicked right away. We had a lot to talk about—he had completed an English Channel swim a few months before, and I'm hoping to swim the Channel next year. Both of us have built our lives around swimming, which sometimes leaves little time for other things, including relationships. We compared notes on training techniques, equipment, dealing with cold water, rip tides, and more.

Our lunch lasted all afternoon and into the evening. By the end of that evening, I considered Nigel a friend, and someone I could very easily fall in love with.

Nigel and I spent almost all my remaining week's vacation together. Poor Carrie joked that her plan had backfired, because I spent embarrassingly little time at her house. By the end of the week, we both knew this was headed toward a serious relationship.

Since then, Nigel and I have corresponded almost constantly by email, and call each other twice a week. During one long phone call, we decided to get married.

It was difficult deciding where we would live after marrying—Nigel has a beautiful cottage in Cornwall, and I could happily live in England. However, my mother is in poor health, and ever since my father passed away last year, she has relied on my help, so we agreed to make our home in New York.

As proof that Nigel and I are in love and plan to marry, I am attaching copies of his plane tickets to New York; photos of the two of us together; copies of our telephone bills and some of our emails; copies of catering and other contracts showing that the two of us plan to marry in July; and copies of our travel itinerary for New Zealand, where we will honeymoon.

Signed: Sandra L. Beach
Sandra L. Beach

Date: 8/2/2008

Affidavit of Support, Sample Form I-134 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0014; Exp. 04-30-07

I-134, Affidavit of Support

(Answer all items. Type or print in black ink.)

I, Sandra Leah Beach (Name) residing at 114 Fulton Street, Apt. 6E (Street and Number)
New York (City) NY (State) 10038 (Zip Code if in U.S.) U.S.A. (Country)

Being duly sworn depose and say:

1. I was born on 12/20/1982 (Date-mm/dd/yyyy) at Horseheads (City) U.S.A. (Country)

If you are **not** a native born U.S. citizen, answer the following as appropriate:

- a. If a U.S. citizen through naturalization, give certificate of naturalization number _____
- b. If a U.S. citizen through parent(s) or marriage, give citizenship certificate number _____
- c. If U.S. citizenship was derived by some other method, attach a statement of explanation.
- d. If a lawfully admitted permanent resident of the United States, give "A" number _____

2. I am 25 years of age and have resided in the United States since (date) birth

3. This affidavit is executed on behalf of the following person:

Name (Family Name)	(First Name)	(Middle Name)	Gender	Age
Hollis	Nigel	Ian	M	27
Citizen of (Country)	Marital Status	Relationship to Sponsor		
United Kingdom	Divorced	Fiancé		
Presently resides at (Street and Number)	(City)	(State)	(Country)	
123 Limestone Way #7	Penzance	Cornwall	U.K.	

Name of spouse and children accompanying or following to join person:

Spouse	Gender	Age	Child	Gender	Age
Child	Gender	Age	Child	Gender	Age
Child	Gender	Age	Child	Gender	Age

4. This affidavit is made by me for the purpose of assuring the U.S. Government that the person(s) named in item (3) will not become a public charge in the United States.

5. I am willing and able to receive, maintain and support the person(s) named in item 3. That I am ready and willing to deposit a bond, if necessary, to guarantee that such person(s) will not become a public charge during his or her stay in the United States, or to guarantee that the above named person(s) will maintain his or her nonimmigrant status, if admitted temporarily and will depart prior to the expiration of his or her authorized stay in the United States.

6. I understand this affidavit will be binding upon me for a period of three (3) years after entry of the person(s) named in item (3) and that the information and documentation provided by me may be made available to the Secretary of Health and Human Services and the Secretary of Agriculture, who may make it available to a public assistance agency.

7. I am employed as or engaged in the business of Executive Assistant (Type of Business) with Helpport Foundation (Name of Concern)
at 87 West 57th Street (Street and Number) New York (City) NY (State) 10039 (Zip Code)

I derive an annual income of: *(If self-employed, I have attached a copy of my last income tax return or report of commercial rating concern which I certify to be true and correct to the best of my knowledge and belief. See instructions for nature of evidence of net worth to be submitted.)*

\$ 45,000

I have on deposit in savings banks in the United States:

\$ 8,000

I have other personal property, the reasonable value of which is:

\$ 7,500

Sample Form I-134 (page 2)

I have stocks and bonds with the following market value, as indicated on the attached list, which I certify to be true and correct to the best of my knowledge and belief:

\$ 0

I have life insurance in the sum of:

\$ 0

With a cash surrender value of:

\$ _____

I own real estate valued at:

\$ 0

With mortgage(s) or other encumbrance(s) thereon amounting to: \$ _____

Which is located at: _____
(Street and Number) (City) (State) (Zip Code)

8. The following persons are dependent upon me for support: (Place an "x" in the appropriate column to indicate whether the person named is *wholly* or *partially* dependent upon you for support.)

Name of Person	Wholly Dependent	Partially Dependent	Age	Relationship to Me
None	☐	☐		
	☐	☐		
	☐	☐		

9. I have previously submitted affidavit(s) of support for the following person(s). If none, state none.

Name	Date submitted
None	

10. I have submitted a visa petition(s) to U.S. Citizenship and Immigration Services (USCIS) on behalf of the following person(s). If none, state none.

Name	Relationship	Date submitted
Nigel Ian Hollis	Fiancé	08/02/2008

11. I ☐ intend ☒ do not intend to make specific contributions to the support of the person(s) named in item 3.
(If you check "intend," indicate the exact nature and duration of the contributions. For example, if you intend to furnish room and board, state for how long and, if money, state the amount in U.S. dollars and state whether it is to be given in a lump sum, weekly or monthly, and for how long.)

Oath or Affirmation of Sponsor.

I acknowledge that I have read Part III of the Instructions, Sponsor and Alien Liability, and am aware of my responsibilities as a sponsor under the Social Security Act, as amended, and the Food Stamp Act, as amended.

I swear (affirm) that I know the contents of this affidavit signed by me and that the statements are true and correct.

Signature of sponsor _____

Subscribed and sworn to (affirmed) before me this _____ day of _____;

at _____. My commission expires on _____

Signature of Officer Administering Oath _____ Title _____

If the affidavit is prepared by someone other than the sponsor, please complete the following: I declare that this document was prepared by me at the request of the sponsor and is based on all information of which I have knowledge.

(Signature) (Address) (Date)

Application for Immigrant Visa and Alien Registration, Sample Form DS-230, Part I (page 1)

		 U.S. Department of State APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION		OMB APPROVAL NO. 1405-0015 EXPIRES: 07/31/2007 ESTIMATED BURDEN: 1 HOUR* (See Page 2)	
PART I - BIOGRAPHIC DATA					
INSTRUCTIONS: Complete one copy of this form for yourself and each member of your family, regardless of age, who will immigrate with you. Please print or type your answers to all questions. Mark questions that are Not Applicable with "N/A". If there is insufficient room on the form, answer on a separate sheet using the same numbers that appear on the form. Attach any additional sheets to this form. WARNING: Any false statement or concealment of a material fact may result in your permanent exclusion from the United States. This form (DS-230 PART I) is the first of two parts. This part, together with Form DS-230 PART II, constitutes the complete Application for Immigrant Visa and Alien Registration.					
1. Family Name		First Name		Middle Name	
Hollis		Nigel		Ian	
2. Other Names Used or Aliases (If married woman, give maiden name)					
None					
3. Full Name in Native Alphabet (If Roman letters not used)					
4. Date of Birth (mm-dd-yyyy)	5. Age	6. Place of Birth			
8/17/80	27				
		(City or town)	(Province)	(Country)	
		Penzance	Cornwall	England	
7. Nationality (If dual national, give both)	8. Gender	9. Marital Status			
U.K.	☒ Male ☐ Female	☐ Single (Never married) ☐ Married ☐ Widowed ☒ Divorced ☐ Separated			
		Including my present marriage, I have been married _____ times.			
10. Permanent address in the United States where you intend to live, if known (street address including zip code). Include the name of a person who currently lives there.			11. Address in the United States where you want your Permanent Resident Card (Green Card) mailed, if different from address in item #10 (include the name of a person who currently lives there).		
Sandra Beach 114 Fulton Street #6E New York, NY 10038 Telephone number: 212-555-1212			Telephone number:		
12. Your Present Occupation		13. Present Address (Street Address) (City or Town) (Province) (Country)			
Sportswear Designer		123 Limestone Way Cornwall, Penzance, U.K. TR197NL Telephone number: Home 1234 123456 Office 1234 654321			
14. Name of Spouse (Maiden or family name)		First Name		Middle Name	
Date (mm-dd-yyyy) and place of birth of spouse:					
Address of spouse (If different from your own):					
Spouse's occupation: _____ Date of marriage (mm-dd-yyyy): _____					
15. Father's Family Name		First Name		Middle Name	
Hollis		Kevin		Andrew	
16. Father's Date of Birth (mm-dd-yyyy)	Place of Birth	Current Address		If deceased, give year of death	
1/12/1953	York, England	83 Herriott Road, York			
17. Mother's Family Name at Birth		First Name		Middle Name	
Chumley		Sarah		Elizabeth	
18. Mother's Date of Birth (mm-dd-yyyy)	Place of Birth	Current Address		If deceased, give year of death	
4/7/1957	York, England	83 Herriott Road, York			
DS-230 Part I THIS FORM MAY BE OBTAINED FREE AT CONSULAR OFFICES OF THE UNITED STATES OF AMERICA Page 1 of 4 07-2004 PREVIOUS EDITIONS OBSOLETE					

Sample Form DS-156, Part I (page 2)

30. Have You Ever Been Issued a U.S. Visa? ☒ Yes ☐ No WHEN? <u>07/12/2001</u> WHERE? <u>London</u> WHAT TYPE OF VISA? <u>B-2 Tourist</u>	31. Have You Ever Been Refused a U.S. Visa? ☐ Yes ☒ No WHEN? _____ WHERE? _____ WHAT TYPE OF VISA? _____
32. Do You Intend To Work in The U.S.? ☒ Yes ☐ No (If YES, give the name and complete address of U.S. employer.) <u>After receipt of a work permit—</u> <u>no employer yet.</u>	33. Do You Intend To Study in The U.S.? ☐ Yes ☒ No (If YES, give the name and complete address of the school.)
34. Names and Relationships of Persons Traveling With You <u>None</u>	
35. Has Your U.S. Visa Ever Been Cancelled or Revoked? ☐ Yes ☒ No	36. Has Anyone Ever Filed an Immigrant Visa Petition on Your Behalf? ☐ Yes ☒ No If Yes, Who? _____
37. Are Any of The Following Persons in The U.S., or Do They Have U.S. Legal Permanent Residence or U.S. Citizenship? Mark YES or NO and indicate that person's status in the U.S. (i.e., U.S. legal permanent resident, U.S. citizen, visiting, studying, working, etc.). ☐ YES ☒ NO Husband/ Wife _____ ☒ YES ☐ NO ☐ YES ☒ NO Fiance/ Fiancee <u>U.S. citizen</u> ☐ YES ☒ NO ☐ YES ☒ NO Father/ Mother _____ ☐ YES ☒ NO ☐ YES ☒ NO Son/ Daughter _____ ☐ YES ☒ NO	
38. IMPORTANT: ALL APPLICANTS MUST READ AND CHECK THE APPROPRIATE BOX FOR EACH ITEM. A visa may not be issued to persons who are within specific categories defined by law as inadmissible to the United States (except when a waiver is obtained in advance). Is any of the following applicable to you? ● Have you ever been arrested or convicted for any offense or crime, even though subject of a pardon, amnesty or other similar legal action? Have you ever unlawfully distributed or sold a controlled substance (drug), or been a prostitute or procurer for prostitutes? ☐ YES ☒ NO ● Have you ever been refused admission to the U.S., or been the subject of a deportation hearing, or sought to obtain or assist others to obtain a visa, entry into the U.S., or any other U.S. immigration benefit by fraud or willful misrepresentation or other unlawful means? Have you attended a U.S. public elementary school on student (F) status or a public secondary school after November 30, 1996 without reimbursing the school? ☐ YES ☒ NO ● Do you seek to enter the United States to engage in export control violations, subversive or terrorist activities, or any other unlawful purpose? Are you a member or representative of a terrorist organization as currently designated by the U.S. Secretary of State? Have you ever participated in persecutions directed by the Nazi government of Germany; or have you ever participated in genocide? ☐ YES ☒ NO ● Have you ever violated the terms of a U.S. visa, or been unlawfully present in, or deported from, the United States? ☐ YES ☒ NO ● Have you ever withheld custody of a U.S. citizen child outside the United States from a person granted legal custody by a U.S. court, voted in the United States in violation of any law or regulation, or renounced U.S. citizenship for the purpose of avoiding taxation? ☐ YES ☒ NO ● Have you ever been afflicted with a communicable disease of public health significance or a dangerous physical or mental disorder, or ever been a drug abuser or addict? ☐ YES ☒ NO While a YES answer does not automatically signify ineligibility for a visa, if you answered YES you may be required to personally appear before a consular officer.	
39. Was this Application Prepared by Another Person on Your Behalf? (If answer is YES, then have that person complete item 40.) ☐ Yes ☒ No	
40. Application Prepared By: NAME: _____ Relationship to Applicant: _____ ADDRESS: _____ Signature of Person Preparing Form: _____ DATE (dd-mm-yyyy) _____	
41. I certify that I have read and understood all the questions set forth in this application and the answers I have furnished on this form are true and correct to the best of my knowledge and belief. I understand that any false or misleading statement may result in the permanent refusal of a visa or denial of entry into the United States. I understand that possession of a visa does not automatically entitle the bearer to enter the United States of America upon arrival at a port of entry if he or she is found inadmissible.	
APPLICANT'S SIGNATURE <u>Nigel J. Hollis</u> DATE (dd-mm-yyyy) <u>11/20/2008</u>	
Privacy Act and Paperwork Reduction Act Statements INA Section 222(f) provides that visa issuance and refusal records shall be considered confidential and shall be used only for the formulation, amendment, administration, or enforcement of the immigration, nationality, and other laws of the United States. Certified copies of visa records may be made available to a court which certifies that the information contained in such records is needed in a case pending before the court. Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. You do not have to provide the information unless this collection displays a currently valid OMB number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State, A/RPS/DIR, Washington, DC 20520.	

Nonimmigrant Fiancé(e) Visa Application, Sample Form DS-156K



U.S. Department of State
NONIMMIGRANT FIANCÉ(E) VISA APPLICATION
 USE WITH FORM DS-156

OMB APPROVAL NO. 1405-0096
 EXPIRES: 07/31/2007
 ESTIMATED BURDEN: 1 HOUR*

The following questions must be answered by all applicants for visas to enter the United States as the fiancée or fiancé of a U.S. citizen in order that a determination may be made as to visa eligibility.

This form, together with Form DS-156, Nonimmigrant Visa Application, completed in duplicate, constitutes the complete application for a "K" Fiancé(e) Nonimmigrant Visa authorized under Section 222(c) of the Immigration and Nationality Act.

1. FAMILY NAME Hollis		FIRST NAME Nigel	MIDDLE NAME Ian
2. DATE OF BIRTH (mm-dd-yyyy) 08/17/1982		3. PLACE OF BIRTH (City, Province, Country) Penzance, Cornwall, England, U.K.	
4. MARITAL STATUS If you are now married or were previously married, answer the following:			
a. Name of spouse: <u>Jane Simpson</u>			
b. Date (mm-dd-yyyy) and place of marriage: <u>06/10/2002</u> <u>London</u>			
c. How and when was marriage terminated: <u>05/20/2005</u> <u>Divorce</u>			
d. If presently married, how will you marry your U.S. citizen fiancé(e)? Explain:*			

* NOTE: If presently married to anyone, you are **not** eligible for a fiancé(e) visa.

5. LIST NAME, DATE AND PLACE OF BIRTH OF ALL UNMARRIED CHILDREN UNDER 21 YEARS OF AGE			WILL ACCOMPANY YOU		WILL FOLLOW YOU	
NAME	BIRTH DATE (mm-dd-yyyy)	BIRTH PLACE	YES	NO	YES	NO
None			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐
			☐	☐	☐	☐

THE FOLLOWING DOCUMENTS MUST BE ATTACHED IN ORDER TO APPLY FOR A FIANCÉ(E) NONIMMIGRANT VISA

- Your birth certificate
- Marriage certificate (if any)
- Evidence of engagement to your fiancé(e)
- Birth certificates of all children listed in No. 5
- Divorce decree (if any)
- Evidence of financial support
- Death certificate of spouse (if any)
- Police certificates

NOTE: All of the above documents will also be required by the U.S. Citizenship and Immigration Services (USCIS) when you apply for adjustment of status to lawful permanent resident. The USCIS will accept these documents for that purpose.

DO NOT WRITE BELOW THIS LINE
 The consular officer will assist you in answering this part.

I understand that I am required to submit my visa to the United States Immigration Officer at the place where I apply to enter the United States, and that the possession of a visa does not entitle me to enter the United States if at that time I am found to be inadmissible under the immigration laws. I further understand that my adjustment of status to permanent resident alien is dependent upon marriage to a U.S. citizen and upon meeting all of the requirements of the U.S. Department of Homeland Security.

I understand that any willfully false or misleading statement or willful concealment of a material fact made by me herein may subject me to permanent exclusion from the United States and, if I am admitted to the United States, may subject me to criminal prosecution and/or deportation.

I hereby certify that I am legally free to marry and intend to marry _____, a U.S. citizen, within 90 days of my admission into the United States.

I do solemnly swear or affirm that all statements which appear in this application have been made by me and are true and complete to the best of my knowledge and belief.

 Signature of Applicant

SUBSCRIBED AND SWORN TO before me this _____ day of _____, _____ at: _____

 United States Consular Officer

*Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. In accordance with 5 CFR 1320.5(b), persons are not required to respond to the collection of this information unless this form displays a currently valid OMB control number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/RPS/DIR) Washington, D.C. 20520.

DS-156K
 07-2004

PREVIOUS EDITIONS OBSOLETE

Green Cards Through Marriage

A. Who Qualifies.....	80
B. Special Rules in Court Proceedings	81
C. Quick View of the Marriage-Based Green Card Application Process.....	81
D. Detailed Instructions for the Marriage-Based Green Card Application Process.....	84
1. Beginning the Process: The Visa Petition.....	84
2. Option for Overseas Spouses of U.S. Citizens: The Fiancé Visa Petition	86
3. Moving the Process Forward	87
4. Advice for Spouses of Permanent Residents	88
5. Documenting Your Bona Fide Marriage.....	89
E. Bringing Your Children	89
1. If You're Marrying a U.S. Citizen	89
2. If You're Marrying a U.S. Permanent Resident.....	90
3. Final Phases of Children's Green Card Application.....	90
F. If Your Marriage Is Less Than Two Years Old.....	90
1. Forms Required for Removal of Conditions	91
2. If Your Spouse Does Not Sign the Joint Petition.....	92
3. People Married Two Years or More.....	92
G. If You Marry Again.....	92
H. Common Questions About Marriage and Immigration.....	93
1. Before Marriage	93
2. After Marriage.....	93

Every year, thousands of immigrants fall in love with U.S. citizens or permanent residents. Some couples meet overseas, others meet when the foreigner is studying or traveling in the United States. In a few cases, both members of the couple are foreign born, but one becomes a U.S. citizen or permanent resident. No matter how it came about, your topmost priority right now may be to join up in the U.S. as soon as possible. This chapter will lay out the possibilities and help you decide the easiest, fastest way to achieve this.



CAUTION

We're assuming that you plan to live in the United States. If not, there's no point in applying for a green card now. You won't get one if the U.S. citizen or permanent resident can't show that he or she is, or soon will be, living and earning income in the U.S., and you'll lose the green card if you don't make the U.S. your home. If you're going to be living overseas for a while, wait until your plans change to apply for the green card.

A. Who Qualifies

You are eligible for a green card if you have entered into a bona fide, legal marriage with a U.S. citizen or lawful permanent resident. Bona fide means that the marriage is based on your desire to create a life together with your new spouse, not merely on your desire to obtain a green card. Legal means that it is valid and recognized by the laws of the state or country in which you live. It doesn't matter whether you hold the marriage ceremony in the United States or overseas, but you do need to abide by local laws—and obtain a document, such as a marriage certificate, to prove that you've done so.

- **Marriage to a U.S. citizen** makes you an immediate relative and eligible to receive a green card just as soon as you can get through the application process.
- **Marriage to a U.S. permanent resident**, unfortunately, will not yield such fast results.

Your new spouse can file a visa petition for you right away, but then you'll be placed in category 2A of the family visa preferences and have to wait, probably several years, before a green card becomes available to you. Only after that waiting period is over and you've applied for your green card will you be legally permitted to live in the United States.

The Inconveniences of Marriages of Convenience

In the early 1980s, the U.S. government came to believe that as many as half the petitions based on marriage were fraudulent—in other words, entered into solely for the purpose of obtaining a green card. In 1986, the U.S. Congress passed a law called the Immigration Marriage Fraud Amendments, to eliminate as many “paper marriages” as possible.

U.S. citizens, permanent residents, and aliens who evade immigration laws by means of a fraudulent marriage can be charged with a federal crime. Those found guilty can be imprisoned for up to five years, fined up to \$250,000, or both. In addition, permanent residents can be deported, as can those who are undocumented.

If you are even entertaining the idea of entering into a sham marriage, consider the following:

- Do you want to live with the possibility of being blackmailed emotionally, psychologically, and financially?
- Do you want to be prosecuted for a federal crime with a penalty of five years in prison, a fine of up to \$250,000, or both?

If USCIS discovers that you have entered into a marriage or even helped someone else enter into a marriage to evade the immigration laws—or if you have submitted papers to USCIS based on such a marriage—you will almost certainly forever lose the possibility of getting a green card, no matter what relationships you may have in the future.

**CAUTION**

If the U.S. petitioner has a criminal record, see an attorney. Under the Adam Walsh Child Protection and Safety Act of 2006, U.S. citizens and lawful permanent residents who have been convicted of any “specified offense against a minor” are prohibited from filing a family-based immigrant petition on behalf of any beneficiary (whether a child or not). USCIS will run security checks on all petitions and may call the petitioner in for fingerprinting. If the petitioner has a conviction for one of the specified offenses against a minor, then the petition will not be approved unless USCIS determines that the U.S. petitioner poses no risk to the beneficiary.

B. Special Rules in Court Proceedings

Suppose that removal—formerly called deportation or exclusion—proceedings have been started against you, perhaps because the immigration authorities have found that you are out of status or that you entered the U.S. without the proper documentation. While the proceedings are pending, you marry a U.S. citizen. You are now potentially eligible to file your marriage-based petition and the application for adjustment of status with the judge.

However, because you married while removal proceedings were going on, your marital status is suspect. After all, you did get married with the “shotgun” of a possible removal order facing you. You, the newly married alien, will have to provide clear and convincing evidence showing that the marriage was entered into in good faith and not solely for the purpose of getting a green card, and that no fee or financial arrangements were given for filing the petition. (Don’t worry about the money you might have paid an attorney or other person to help you, which doesn’t count.)

You will have to clearly establish that you married to establish a life together—for love and with a real commitment—not simply to avoid removal from the United States. See Section D4, below, for more guidance on gathering this kind of evidence. Also seek help from an experienced immigration attorney.

C. Quick View of the Marriage-Based Green Card Application Process

Let’s start with the general concept: To get a marriage-based green card, the U.S. citizen or permanent resident spouse must begin the process by submitting (by mail) a “visa petition” (Form I-130). (You can’t just walk this form into your local USCIS office.) This form serves to prove to the immigration authorities that you’re legally married. After that petition is approved, you, the immigrant, complete your half of the process by submitting a green card application and attending an interview, usually with your spouse. Your application serves to prove not only that your marriage is technically legal, but that it’s the “real thing,” and that you’re otherwise eligible for U.S. permanent residence.

However, the details of when and how all this happens depend on several things: first, whether you, the immigrant, are living overseas or in the United States; and second, whether your spouse is a U.S. citizen or a permanent resident. We’ll briefly describe each possible situation separately. It will also depend on the procedures, practices, and scheduling backup at the embassy where you’ll be receiving your visa eventually.

Immigrant living overseas, married to a U.S. citizen, option 1. Under the traditional methods, the U.S. citizen mails the visa petition to a USCIS office

(unless the citizen also lives overseas, in which case some consulates will accept the visa petition directly). After USCIS approves the visa petition, the immigrant goes through consular processing (fully described in Chapter 19), which involves sending in fees and paperwork and ultimately attending a visa interview at a U.S. consulate in the immigrant's home country. At the interview (which only the immigrant is required to attend), the immigrant is approved for a visa. He or she must then use the visa to enter the United States within six months to claim his or her permanent residence (or "conditional" residence, if you've been married less than two years at this time; see Section F for details). The entire process usually takes at least a year.

Immigrant living overseas, married to a U.S. citizen, option 2. Because the process of obtaining a green card from overseas based on marriage can take so long, a second method was devised a few years ago. This new method allows the married immigrant to start the application process overseas, but finish it in the U.S., having gained U.S. entry using a modified "fiancé visa." As usual, the U.S. citizen starts the process by mailing a visa petition (on Form I-130) to USCIS. However, as soon as the U.S. citizen receives a receipt notice from USCIS, he or she can submit a separate, fiancé visa petition (on Form I-129F) to USCIS.

After USCIS approves the fiancé visa petition, the immigrant goes through consular processing (described later in this chapter), and attends an interview at a U.S. consulate. The consulate approves the immigrant for a K-3, or fiancé, visa. This does not mean that the immigrant has been approved for a green card; the K-3 visa simply allows the immigrant to enter the United States in order to apply for the green card there.

After entering the U.S., the immigrant can prepare and mail an adjustment of status application to USCIS. After several months, the

immigrant and his or her spouse must attend an interview, at which the immigrant will be approved for permanent residence (or conditional residence if they've been married for less than two years at that time; see Section F for details).



CAUTION

The K-3 fiancé visa option isn't always faster or better. It all depends on how quickly the USCIS processing office is moving on different types of applications. Attorneys in some areas have found that it's actually faster to stick with the traditional marriage visa procedure—and it's certainly cheaper, since adjustment of status fees in the United States are now over \$1,000 per person. Talk to a local immigration services agency or an attorney to find out more.

Immigrant living overseas, married to a U.S. permanent resident. The U.S. permanent resident mails the visa petition to USCIS. It will stay there until close to the time the immigrant's priority date is current (see Chapter 5 for a discussion of priority dates). After it's approved, the immigrant goes through consular processing (as fully described in Chapter 19).

At the interview at a U.S. consulate, (which only the immigrant is required to attend), the immigrant is approved for a visa, then must enter the United States within six months to claim permanent residence.

Immigrant living in the United States, married to a U.S. citizen. Ideally, the U.S. citizen mails the visa petition together with the immigrant's green card application (adjustment of status packet complete with forms, photos, and the results of a medical exam) to USCIS. The immigrant is sent a fingerprint appointment notice and later an interview appointment notice. Both husband and wife must attend the interview, which will be held at a local USCIS district office. At the interview, the immigrant is approved for permanent residence

(or conditional residence, if they've been married less than two years at this time; see Section F for details). However, not all immigrants are eligible to use the adjustment of status procedure—in particular, those whose last entry into the U.S. was illegal cannot. See Chapter 18 for details.

Immigrant living in the United States, married to a U.S. permanent resident. The U.S. permanent resident mails the visa petition to USCIS. It will stay there until close to the time the immigrant's priority date (discussed in Chapter 5) is current. After it's approved, however, things can get complicated. The only way the immigrant can remain in the United States to adjust status (submit a green card application) is if he or she has either been living legally in the United States during all the intervening years (in which case he or she can adjust status as described in this book) or started the process when previous laws were in effect. (See Chapter 18 for details on who can adjust status.) The immigrant's alternative is to continue with the case at an overseas U.S. consulate, but if the immigrant has been living illegally in the U.S., this could result in a three- or ten-year bar on reentry (as explained in Chapter 4). See an attorney for a full personal analysis.



CAUTION

Entering the U.S. illegally causes problems.

Except in rare circumstances (described in Chapter 18), people who entered the United States illegally (for example, by crossing the border away from an inspection point) do not have the right to adjust status—that is, apply for a green card—in the United States. Attempting to turn your application in to USCIS could get you deported. Your best course is to get help from an experienced immigration attorney in evaluating and completing your application.

Immigrant Story: Dealing With an Illegal Entry

Carmela, from Costa Rica, won the green card lottery one year, and moved to San Diego, California. Her boyfriend Jorge, who missed Carmela terribly, made his way to Mexico and then crossed the border illegally to join her. They got married seven months later, and picked up a copy of this book. Carmela then filed a form I-130 visa petition on Jorge's behalf. However, they also realized that Jorge would be ineligible to adjust status in the United States after his priority date became current (which they expected to take a few years).

What's more, Jorge realized, when it came time to get his green card at a U.S. consulate, he would be barred from returning for three years, because he'd already stayed in the U.S. unlawfully for more than 180 days—and that if he stayed another five months, he would be barred from returning for a whole ten years.

Jorge decides to leave the United States before his unlawful presence has added up to one year. The good news is, he can work off the three-year bar on reentering as soon as he's out of the U.S. and while he's waiting for his priority date to become current. In fact, he's likely to have to wait another two years after working off his three-year bar until his priority date is current (in the category for spouses of permanent residents or "2A," average waits have been about five years lately).

D. Detailed Instructions for the Marriage-Based Green Card Application Process

Now we'll break the application process down into individual procedures, some of which will be covered here and others in the next chapters—we'll tell you exactly where to turn to for your situation. We'll start by discussing the visa petition, which all couples must prepare to begin the process.

Note: The legal term for the U.S. citizen or permanent resident who is signing immigration papers for an alien spouse is “petitioner.” The legal term for the immigrating spouse is “beneficiary.”

1. Beginning the Process: The Visa Petition

No matter what the circumstances, the U.S. citizen or permanent resident must prepare and collect the following items that make up the visa petition:

- ❑ Form I-130, Petition for Alien Relative. (See the sample at the end of this chapter. However, if you're also planning to apply for a fiancé visa for speedy entry into the United States, there's one important change to the usual procedures for filling out the form: On Question 22, the U.S. spouse should write “Applicant plans to obtain a K-3 visa abroad and adjust status in the United States,” then fill in the lines regarding which city the immigrant plans to adjust status in, and which consulate he or she would return to, if necessary, as a backup.) This form must be signed by the U.S. citizen or permanent resident spouse. It gives information about both the husband and the wife.
- ❑ Two copies of Form G-325A, Biographic Information—one for the husband and the other for the wife. Each person must fill out a separate form and sign it. (See the sample at the end of this chapter.) The form contains

information about the parents, places of residence, employers of both spouses during the past five years, and any previous foreign residences. Both of these forms can be used for checking on the alien spouse's background.

- ❑ Photos of the immigrant and the spouse (one each). These must be passport-style, in color, and taken within 30 days before the filing. See Chapter 22 for more detailed photo requirements. Write your name in pencil on the back of the photo, in case it gets separated from your file.
- ❑ Proof that the American half of the couple (the “petitioner”) is either a U.S. citizen or permanent resident. If a citizen, the petitioner should provide a copy of his or her passport, birth certificate, naturalization certificate (don't worry, it's legal to photocopy it for this purpose), or copy of Form FS-20 (Report of Birth Abroad of a Citizen of the United States, issued by a U.S. consulate). If a permanent resident, the person should provide a copy of his or her green card (front and back), passport stamp, or USCIS approval notice.
- ❑ Documents to prove that there is a valid marriage, including copies of the documents listed below.

Marriage certificate. Submit the civil registry certificate and not the marriage license or the church certificate, unless your country accepts a church marriage certificate as an official document. Marriage by proxy, a cultural practice in certain countries, is not acceptable to the immigration authorities.

Previous marriages. If either of you was previously married, attach proof of the termination of the previous marriage—a divorce decree, annulment decree, or death certificate. Some foreign divorces may not be recognized by USCIS. The law provides that at least one of the parties must be living in the place where the divorce was granted. In

addition, if the divorcing pair is living in the U.S., they should obtain a divorce in a local court, not at their embassy.

- ❑ Filing fee (currently \$355) in the form of a check, money order, or certified check payable to the U.S. Department of Homeland Security.

See Chapter 22 for more detailed instructions on preparing these documents.

When you've completed and assembled all these items, make two complete copies for yourself and your spouse. What you'll do with it next depends on where you are living, how you entered the U.S. and whether you're eligible to adjust status here, your spouse's status, and where your spouse is living, as detailed on the summary chart below. Look under "Where to Mail the Application."

SUMMARY CHART: From Visa Petition to Green Card Application

Your situation	Where to mail the application	What's next
You're living overseas, and your spouse is a U.S. citizen living in the United States.	Option 1: Standard procedure. The petitioner sends the I-130 visa petition via certified mail with a return receipt requested to the USCIS "lockbox" in Chicago, which will forward it to the Service Center that serves your spouse's geographic region. Find the correct address and post office box on the USCIS website at www.uscis.gov. Option 2: K-3 visa. Although you're married, you're allowed to use a special type of fiancé visa to get you into the United States, after which you must apply to adjust status in order to become a permanent resident. To take advantage of this option, send Form I-130 as detailed above, but as soon as you can prove that USCIS received it, also send Form I-129F to the USCIS office where the I-130 is pending.	Option 1: Standard procedure. As soon as the visa petition is approved, you'll be able to apply for your immigrant visa and green card through an overseas U.S. consulate. (See Chapter 19.) Option 2: K-3 fiancé visa procedure. As soon as USCIS approves the Form I-129F fiancé visa petition, you will be able to apply for a nonimmigrant visa at an overseas consulate (see Chapter 6, Section A5 for instructions). (By the way, if your Form I-130 is approved before your consular interview for the K-3 visa, it'll probably be easiest to ask that the approval be forwarded to the consulate, and then apply for an immigrant visa, allowing you to become a permanent resident as soon as you enter the U.S.) After you enter the United States, it's time to apply for a green card through USCIS (see Chapter 18 for instructions on the adjustment of status application). To avoid USCIS confusion, you should, as soon as possible after entering the U.S., send a letter to the service center processing the Form I-130 saying that you are here and will be adjusting status. (Without such a letter, some service centers have been known to send the case to the overseas consulate for processing.)

SUMMARY CHART: From Visa Petition to Green Card Application (continued)

Your situation	Where to mail the application	What's next
You're living overseas, and your spouse is a U.S. lawful permanent resident living in the United States.	Send the I-130 visa petition via certified mail with a return receipt requested to the USCIS "lockbox" in Chicago, which will forward it to a USCIS office that serves your spouse's geographic region. Find the correct address and post office box on the USCIS website at www.uscis.gov .	Approval of the visa petition will give you a priority date, but you'll have to wait until that date is current to apply for your green card. You'll need to wait overseas during that time, after which you'll apply for your immigrant visa and green card through a U.S. consulate. (See Chapter 19.)
You're presently in the U.S., and your spouse is a lawful permanent resident.	Send the I-130 visa petition via certified mail with a return receipt requested to the USCIS "lockbox" in Chicago, which will forward it to a USCIS office that serves your spouse's geographic region. Find the correct address and post office box on the USCIS website at www.uscis.gov .	Approval of the visa petition will give you a priority date, but you'll have to wait until that date is current to apply for your green card. Unless you have a separate visa to remain in the U.S. for those years, or will be eligible to adjust status in the U.S. (see Chapter 18), you may have to leave soon to avoid the three- and ten-year time bars for having lived in the U.S. illegally.
You're presently in the U.S., and your spouse is a U.S. citizen. Situation one: You entered illegally.	See an immigration attorney for help—you may not be able to adjust status without leaving the United States, which would probably expose you to a three- or ten-year bar on returning.	
Situation two: You entered legally (with a visa or on a visa waiver, no matter if your expiration date passed), but did not misuse your visa to enter in order to get a green card.	You are eligible to adjust status in the United States. Submit your I-130 visa petition in combination with the immigrant's adjustment of status application (Form I-485 and supporting documents, described in Chapter 18).	Await fingerprinting and, later, an interview at your local USCIS office.

2. Option for Overseas Spouses of U.S. Citizens: The Fiancé Visa Petition

If you've elected to use the fiancé visa option to get you into the United States more quickly, the U.S. citizen will also need to submit a separate visa petition, consisting of:

- ❑ Form I-129F, Petition for Alien Fiancé(e). (See the sample for married couples at the end of this chapter.) The most important thing to realize about this form is that it's usually used for people who haven't yet gotten

married—who are, in fact, fiancés. Don't be thrown off by instructions or questions directed at people who aren't yet married.

- ❑ Proof that the American half of the couple (the petitioner) is a U.S. citizen, such as a copy of his or her passport, birth certificate, naturalization certificate (don't worry, it's legal to photocopy it for this purpose), or copy of Form FS-20 (Report of Birth Abroad of a Citizen of the United States, issued by a U.S. consulate).

- ❑ Proof that the U.S. citizen spouse has already filed Form I-130, Petition for Alien Relative, with USCIS. Wait until USCIS sends a Form I-797 receipt notice, then photocopy this and send the copy.
- ❑ Photos of the immigrant and the spouse (one each). These must be in color, passport-style, and taken within the 30 days before the filing.

Because you're a K-3 applicant, your petitioner need not pay the usual fee for this petition. When you've completed and assembled all these items, make two complete copies for each of your records. Then mail the completed package to the same USCIS office that has your Form I-130 visa petition.

3. Moving the Process Forward

After the U.S. citizen or permanent resident spouse has submitted Form I-130 (and possibly Form I-129F or an adjustment of status packet) to USCIS, it's time to start playing the waiting game. No matter what, you'll probably wait longer than you'd like for a decision on your application.

See Chapter 5 for a full explanation of how long you're likely to wait, and why. In particular, spouses of U.S. permanent residents should understand that years-long waits are caused by limitations on the number of green cards given out in their category every year.

The sooner their permanent resident spouses can apply for U.S. citizenship, the better. Once they become citizens, the immigrating spouses automatically become immediate relatives, and can proceed with the application for a green card. (You don't even have to file a new I-130 visa petition—it's enough to advise USCIS that the petitioner has become a citizen, by sending a letter, including a copy of his or her naturalization certificate, to the last USCIS office you corresponded with. See Chapter 5 for a sample letter.)

If your application seems to be held up due to a simple bureaucratic delay, see Chapter 21 for sample inquiry letters and other instructions on prodding the USCIS into taking action.



TIP

What if the U.S. petitioner dies before USCIS has approved the I-130 visa petition? The answer currently depends on where you live. While general USCIS policy is to deny an I-130 after a petitioning spouse dies, the Ninth Circuit Court of Appeals (covering Alaska, California, Hawaii, Montana, Nevada, Oregon, and Washington) says this is legally wrong. (The case is *Freeman v. Gonzales*, 444 F.3d 1031 (9th Cir. 2006).) So if you live in one of those states, USCIS may have to grant your visa petition. Get help from a lawyer for a personal analysis of your case, no matter where you live.

For the next step in the process, see the “What’s Next” column in the summary chart. For most immigrants, the next step will involve either applying for a green card from outside the United States, through a process called consular processing (discussed in Chapter 19), or from inside the United States, through a process called adjustment of status (discussed in Chapter 18). However, a few unlucky immigrants will get stuck at this point, realizing that because of past illegal entries into the U.S. or other problems, their application cannot go forward. Such persons should consult with an experienced immigration attorney.

Immigrant Story: Speeding the Process by Applying for U.S. Citizenship

At age 20, Ling moved with her parents from Shanghai, China, to Buffalo, New York, after her mother got a teaching position there. The whole family received U.S. green cards. Not long after, a family they knew from Shanghai moved to Toronto, Canada, a few hours' drive across the border. The two families visited each other often. In fact, Ling began dating their son, Wen-Zhan.

Two years later, Ling and Wen-Zhan decided to marry. Although they considered moving to Canada, Ling's father was ill, and she wanted to stay near him. She filed an I-130 for Wen-Zhan. However, because Ling was still a U.S. permanent resident, Wen-Zhan's priority date probably wouldn't become current for around five years.

The thought of living apart for five years seemed awful to them. Ling looked into the situation, and realized that she was three years into her permanent residence. She would (like most people) need another two years—a total of five years with a green card—before she could apply for U.S. citizenship. But knowing that, as soon as she became a citizen, Wen-Zhan would become her immediate relative and he could apply for a green card right away, she decided to keep careful track of the date and work on improving her English to make sure she'd succeed at getting citizenship on her first try.



TIP

Regardless of whether you will be completing your application overseas or in the United States, come back to this chapter for a discussion of materials that only married couples need to prepare in advance of their interview. (See Section D, below.)

4. Advice for Spouses of Permanent Residents

You cannot apply for a green card as a second preference alien—that is, as the spouse of a green card holder—until your priority date is current. There will be a long waiting period for your priority date to become current. For example, as of November 2007, the Department of State listed the waiting period for the second preference 2A category as almost five years. The law expects that you will spend this period outside the United States, and get your visa through a U.S. consulate.

Once your priority date is current, and if you are in status and otherwise eligible, you may apply for adjustment of status in the United States. Being “in status” means that the expiration date on your I-94 hasn't passed and you haven't violated the terms of your visa.

However, during the many years you were waiting for your priority date to become current, it's very possible you reached the expiration date of your permitted stay in the U.S. or worked without authorization—in other words, fell out of status. If either of these is true, or if you entered the country without inspection, you're probably not eligible to apply for adjustment of status unless:

- the spouse through which you're immigrating becomes a U.S. citizen, or
- you're covered by the old legal provision that allowed otherwise ineligible applicants to adjust if they agreed to pay a \$1,000 penalty. To qualify under this penalty provision, you must have had a visa petition or labor certification on file by January 14, 1998; or you must have been physically present in the U.S. on December 21, 2000, and had a visa petition or labor certification on file by April 30, 2001.

Does that mean you should simply leave the U.S. and complete your visa application through an overseas U.S. consulate? Not so fast. If you were out of status for 180 days after April 1, 1997, and then leave the United States and seek to be

admitted through a consulate or border, you will be subject to a three-year waiting period; the period is ten years if you were out of status for one year after April 1, 1997.

There is a waiver available if you are the spouse or the son or daughter of a U.S. citizen or permanent resident and if you can show the U.S. citizen or resident would suffer extreme hardship. It's very difficult to get this waiver. See an attorney for help.

5. Documenting Your Bona Fide Marriage

Whether you are applying for adjustment of status or for an immigrant visa at a consulate abroad, start gathering documents for your green card interview. At the interview, you must present not only the standard information that every immigrant does, but also separate documents showing that you have a real, valid marriage. These may include:

- ☐ birth certificates for all children born to you and your U.S. spouse
- ☐ leases on apartments that you two have occupied, together with rent receipts or cancelled checks
- ☐ hospital cards, union books, insurance policies, pay vouchers, joint bank account statements, utility bills, or charge cards containing both your names
- ☐ federal income tax returns, signed, dated, and authenticated by the Internal Revenue Service, for the years that you have been married
- ☐ your wedding pictures, and
- ☐ any snapshots of the two of you together taken before the marriage and, more importantly, since the marriage.

Collect and make copies of as many of these documents as possible. If you and your spouse have married for love, you will eventually prevail. Nevertheless, you still have to present the required documentary proof.

E. Bringing Your Children

People immigrating through marriage are often allowed to bring their children with them, even if the children are from a previous marriage or relationship. For immigration purposes, your children must be unmarried and under the age of 21 to immigrate at the same time as you. (Options for older or married children are discussed in Chapter 9.)

However, the rules and procedures for having your children immigrate with you vary slightly depending on whether your U.S. spouse is a permanent resident or a citizen.

1. If You're Marrying a U.S. Citizen

If you're marrying a U.S. citizen, each of your children must separately qualify as an "immediate relative" of your spouse in order to immigrate with you.

To qualify as an immediate relative, your child can either be:

- the natural child of the U.S. citizen (if born out of wedlock to a U.S. citizen father, the father must have either legitimated the child while the child was under 18 and living in his custody, or demonstrated a bona fide relationship, through financial or other support), or
- the stepchild of the U.S. citizen, meaning it's legally your (the immigrant's) child, whether by birth or adoption, and you married the U.S. citizen before the child reached the age of 18.

Your spouse will need to submit a separate visa petition (Form I-130) for each one of these immediate-relative children, preferably in the same packet as the visa petition for you, the immigrant. (If you have no choice but to submit the visa petitions separately, write a letter to accompany the later ones, explaining that you'd like the cases joined together.)

If you're also using a fiancé visa for quicker U.S. entry, your spouse must additionally fill out a separate Form I-129F fiancé visa petition for each child.

2. If You're Marrying a U.S. Permanent Resident

If you're marrying a permanent resident, your children (natural or adopted) who are unmarried and under age 21 are considered "derivative beneficiaries." As a practical matter, this means that, at least at the beginning, your children won't need a separate initial visa petition in order to be included in your immigration process—your spouse must simply fill in the blanks on Form I-130 where it asks for the children's names. Unlike many other applicants, your children won't need to prove that your spouse is their parent or stepparent.

Your children will be given the same priority date as you, and most likely get a visa at the same time (provided they remain unmarried and under the age of 21). If they marry, they lose their chance to immigrate as beneficiaries. If they turn 21 before their priority date becomes current, they drop into a separate visa category (2B) and will immigrate later.

3. Final Phases of Children's Green Card Application

After the visa petition has been approved and you and your children are ready to submit your paperwork for your green cards, each child must submit his or her own application, whether to the U.S. consulate overseas or to a U.S. immigration office. These applications are discussed in Chapters 18 and 19.

As a practical matter, however, you can help your child fill out the forms, and even sign them if the child is too young (just write next to your signature, "by [your name], the child's [mother or father].")

F. If Your Marriage Is Less Than Two Years Old

If you become a U.S. resident within two years of the date you were married, whether you were granted your green card through adjustment of status or consular processing, your green card is only conditional—in other words, it expires in another two years. You are considered a "conditional permanent resident."

It seems contradictory to be both "permanent" and "conditional" at the same time, but it actually makes sense in this situation. This is because once you remove the conditional basis, your two years of conditional residence will count as unconditional or permanent residence for naturalization (citizenship) and other purposes.

To receive a green card without conditions that will be valid for more than two years, you could wait until you have been married at least two years before becoming a permanent resident. In fact, if you're overseas, this may mean delaying your date of entry to the United States—because even after you get your immigrant visa from the consulate, you're not a permanent resident until you go through a U.S. port of entry. If your marriage is already two years old at the time your permanent residence is granted, you are a full-fledged permanent resident and do not need to file papers to remove any conditions.

However, most people go ahead and become permanent residents, then wait two years minus 90 days and request the removal of the conditional status. Your foreign-born sons or daughters who may have been petitioned by your spouse must likewise apply for removal of their conditional statuses.

**CAUTION**

The timing of your request is crucial. Mark on your calendar the third month before your second anniversary of becoming a conditional permanent resident, and get your application in before your residence expires. USCIS may send you a reminder, but keep track on your own, just in case (especially if you've changed addresses).

EXAMPLE:

Your date of admission as a conditional permanent resident was December 7, 2008, the date printed on your conditional green card. The second anniversary of your conditional permanent residence is December 7, 2010. And 90 days (three months) before the second anniversary of December 7, 2010 is September 7, 2010. Therefore, you must file for the removal of the conditional status any time after September 7, 2010 and before December 7, 2010.

1. Forms Required for Removal of Conditions

Within the 90 days before the second anniversary of your conditional permanent residence, you must submit the following:

- ☐ Form I-751, Petition to Remove the Conditions on Residence, signed by both husband and wife (see the sample at the end of this chapter), or by the alien spouse alone, if seeking a waiver, and
- ☐ application fee (currently \$465) plus biometrics fee (currently \$80) in the form of a money order or certified check, payable to USCIS.

You must also present evidence of a true marriage. To do this, submit a sample of as many of the following documents as possible (from within the past two years):

- ☐ title to house or condo or co-op, or any other real property showing joint ownership
- ☐ lease to your apartment showing joint tenancy since the time of marriage
- ☐ telephone or electric and gas bills showing both your names or addressed to you as Mr. and Mrs.
- ☐ bank books or statements showing evidence of a joint checking or savings account
- ☐ registration, with both names, of cars or any personal property
- ☐ insurance policies taken by husband or wife and showing the other as the beneficiary of any insurance benefits
- ☐ birth certificate of any child born of the marriage, showing both parents' names
- ☐ current letter from employer of both husband and wife, on the company letterhead, stating present job and salary and the name of a person to be notified in case of emergency
- ☐ current will showing one spouse as the beneficiary of the other's estate, and
- ☐ sworn statements from your friends or relatives stating that they know your marriage was entered into in good faith and the reasons or facts they have to support this judgment. Your parents, employer, coworker, friend, priest, pastor, rabbi, or imam should give details of times and places at which you appeared as husband and wife. This should be required only if you do not have sufficient proof of a true marriage—or for other unusual cases such as a waiver.

These documents should be sent by certified mail, return receipt requested, to the USCIS Regional Service Center nearest your residence. (See the USCIS website for the address and P.O. box.) You may receive a notice for an interview, or your petition may be approved without one.

While you're waiting, however, the receipt notice that you get from the USCIS Service Center will be your only proof that you are legally in the United States. Your stay will remain legal until a decision is made on your Form I-751, but the receipt notice normally expires at one year. You can use the receipt notice in combination with your expired green card to prove your right to work and to return from foreign travel. If you travel, however, the border officials will likely take your expired green card and put a stamp in your passport.

In any case, with or without an interview, your green card becomes permanent only when USCIS decides to approve your joint petition.



TIP

What if one year has gone by and you still haven't gotten a USCIS decision on your I-751 application? Although you're technically still legal, it will be hard to prove that to anyone. The best thing to do is make an InfoPass appointment at your local USCIS office. They may be able to find out what's happening, and should give you a stamp in your passport showing your conditional resident status.

2. If Your Spouse Does Not Sign the Joint Petition

If your spouse will not or cannot sign the joint petition, do not despair. Where certain circumstances are beyond your control, USCIS allows you, as the conditional permanent resident alien, to file without your spouse's signature.

You must fill out the same form, Form I-751, Petition to Remove the Conditions on Residence (see the sample at the end of this chapter), and mail it with the same fee. However, you must also request one of the waivers described on the form. These waivers cover situations where:

- your spouse died
- you were the victim of battery or domestic abuse

- your marriage was valid when it occurred but is now legally terminated (you divorced or got an annulment), or
- you would suffer extreme hardship if removed.

These waivers require the assistance of an experienced immigration attorney. (See Chapter 25 for tips on finding a good one.)

3. People Married Two Years or More

If the original date of your admission as a permanent resident is more than two years after your marriage, you are not considered a conditional permanent resident. You are a full-fledged permanent resident and not subject to the conditions on residence.

EXAMPLE:

You married a permanent resident on February 14, 2004, and a visa petition was filed on your behalf shortly thereafter in the second preference category. However, your visa number was not immediately available, and you had to wait a few years. You finally received your green card and were admitted as a permanent—not conditional—resident on July 4, 2008, more than two years after your date of marriage.

G. If You Marry Again

If your marriage ends in divorce or annulment after you receive your permanent green card, and then you marry another foreign-born person, it will be difficult for you to sponsor your new spouse for a green card.

To obtain permanent residence for your alien spouse during the first five years after you received your green card through marriage, you'll have to show by "clear and convincing evidence" that your first marriage—the one by which you got your green card—was not fraudulent and was entered into in good faith. (See I.N.A. § 204(a)(2)(A);

8 U.S.C. § 1154(a)(2)(A).) Again, this means showing you got married because you wanted to establish a life together, not just to get a green card.

In addition to the other proof required (see Section D, above), you will be asked to explain:

- why and when you got the previous divorce
- how long you lived with your first spouse
- how, when, and where you met your intended spouse, and
- facts about your courtship.

However, after you have been a green card holder for five years—the number of years required for naturalization—you can file a petition for your second spouse without providing such evidence.

Again, Congress provided this restriction because a number of alien couples had obtained green cards fraudulently. One of them would marry either a U.S. citizen or a permanent resident. After getting the immigrant visa, the marriage to the citizen or permanent resident would be ended by divorce or annulment. The immigrant, then in possession of a valid green card, would then marry the original boyfriend, girlfriend, or spouse to give that person a green card, too.

Dura lex, sed lex. The law is harsh, but such is the law.

H. Common Questions About Marriage and Immigration

The answers to most immigration questions depend on timing and the specific history of those involved, so it is difficult to give one correct response in solving a problem. There are, however, a number of questions that are asked over and over.

1. Before Marriage

Q: My boyfriend, who is a U.S. citizen, is getting a divorce soon. Can he file a petition now for me to get a green card?

A: No—because he has not yet legally ended his previous marriage, he cannot marry you now. He can marry you as soon as his previous divorce petition is finalized.

Q: I intend to marry a U.S. citizen, but because work obligations will require us to live in different states for a while, we will not be living together for the first six months or so after we're married. Can she file for me to get a green card?

A: Yes. But you will have to prove to the USCIS examiner that your marriage is true and not a sham. Good evidence of that would be ticket stubs from visits to one another; telephone bills showing frequent calls to one another; stubs from social events you attended together such as movies, theater performances, and meals; copies of joint bank accounts; and bills bearing both of your names.

2. After Marriage

Q: I entered the U.S. with another name. Now I am married to a U.S. citizen using my real name. Can I get my green card?

A: Yes. But you may need to request that the misrepresentation be waived, or forgiven, before USCIS will approve your case. You should see a lawyer in this case.

Q: I have a minor child living with me in the U.S. and two more young children now living outside the U.S. Can I get green cards for all of them?

A: Yes—if your U.S. citizen spouse files separate petitions for them. If your spouse is a permanent resident, not a citizen, he or she can simply include the children on your visa petition.

Q: What will happen if my marriage legally ends before the conditional status of my green card is removed?

A: A conditional resident can file an application for a waiver with USCIS. However, because there are complicated matters of proof, it is best to consult an experienced immigration lawyer for help.

Petition for Alien Relative, Sample Form I-130 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB #1615-0012; Expires 11/30/07

I-130, Petition for Alien Relative

DO NOT WRITE IN THIS BLOCK - FOR USCIS OFFICE ONLY		
A# Section of Law/Visa Category ☐ 201(b) Spouse - IR-1/CR-1 ☐ 201(b) Child - IR-2/CR-2 ☐ 201(b) Parent - IR-5 ☐ 203(a)(1) Unm. S or D - F1-1 ☐ 203(a)(2)(A) Spouse - F2-1 ☐ 203(a)(2)(A) Child - F2-2 ☐ 203(a)(2)(B) Unm. S or D - F2-4 ☐ 203(a)(3) Married S or D - F3-1 ☐ 203(a)(4) Brother/Sister - F4-1	Action Stamp 	Fee Stamp Petition was filed on: _____ (priority date) ☐ Personal Interview ☐ Previously Forwarded ☐ Pet. ☐ Ben. "A" File Reviewed ☐ I-485 Filed Simultaneously ☐ Field Investigation ☐ 204(g) Resolved ☐ 203(a)(2)(A) Resolved ☐ 203(g) Resolved
Remarks: 		

A. Relationship You are the petitioner. Your relative is the beneficiary.

1. I am filing this petition for my: ☒ Husband/Wife ☐ Parent ☐ Brother/Sister ☐ Child	2. Are you related by adoption? ☐ Yes ☒ No	3. Did you gain permanent residence through adoption? ☐ Yes ☒ No
--	---	---

B. Information about you

1. Name (Family name in CAPS) (First) (Middle) NGUYEN Teo Thanh	2. Address (Number and Street) (Apt. No.) 1640 Lincoln Park (Town or City) (State/Country) (Zip/Postal Code) Beaverton Oregon 97006	3. Place of Birth (Town or City) (State/Country) Portland Oregon
4. Date of Birth 04/12/82	5. Gender ☒ Male ☐ Female	6. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name) None		
8. Date and Place of Present Marriage (if married) 05/22/2007 - Salem, Oregon		
9. U.S. Social Security (if any) 756-91-0637	10. Alien Registration Number	
11. Name(s) of Prior Husband(s)/Wife(s) None	12. Date(s) Marriage(s) Ended	

C. Information about your relative

1. Name (Family name in CAPS) (First) (Middle) NGUYEN Lea Nadres	2. Address (Number and Street) (Apt. No.) 1640 Lincoln Park (Town or City) (State/Country) (Zip/Postal Code) Beaverton Oregon 97006	3. Place of Birth (Town or City) (State/Country) Quezon City Philippines
4. Date of Birth 07/18/81	5. Gender ☐ Male ☒ Female	6. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name) Pebet		
8. Date and Place of Present Marriage (if married) 05/22/2007 - Salem, Oregon		
9. U.S. Social Security (if any)	10. Alien Registration Number	
11. Name(s) of Prior Husband(s)/Wife(s)	12. Date(s) Marriage(s) Ended	

13. If you are a U.S. citizen, complete the following:

- My citizenship was acquired through (check one):
- ☒ Birth in the U.S.
- ☐ Naturalization. Give certificate number and date and place of issuance.
- ☐ Parents. Have you obtained a certificate of citizenship in your own name?
- ☒ Yes. Give certificate number, date and place of issuance. ☐ No

14. If you are a lawful permanent resident alien, complete the following:

Date and place of admission for or adjustment to lawful permanent residence and class of admission.

14b. Did you gain permanent resident status through marriage to a U.S. citizen or lawful permanent resident?

☐ Yes ☒ No

13. Has your relative ever been in the U.S.? ☒ Yes ☐ No**14. If your relative is currently in the U.S., complete the following:**

He or she arrived as a: Student
 (visitor, student, stowaway, without inspection, etc.)

Arrival/Departure Record (I-94) **Date arrived**
 11 4 6 10 17 17 11 12 12 11 10 12/23/02

Date authorized stay expired, or will expire, as shown on Form I-94 or I-95 D/S

15. Name and address of present employer (if any)

Date this employment began

16. Has your relative ever been under immigration proceedings?

☒ No ☐ Yes Where _____ When _____

☐ Removal ☐ Exclusion/Deportation ☐ Rescission ☐ Judicial Proceedings

INITIAL RECEIPT RESUBMITTED RELOCATED: Rec'd Sent COMPLETED: App'd Denied Ret'd

Sample Form I-130 (page 2)

C. Information about your alien relative (continued)**17. List husband/wife and all children of your relative.**

(Name) (Relationship) (Date of Birth) (Country of Birth)

N/A

18. Address in the United States where your relative intends to live.

(Street Address) (Town or City) (State)

1640 Lincoln Park

Beaverton

Oregon

19. Your relative's address abroad. (Include street, city, province and country)

Phone Number (if any)

1678 Trout Chautoco Roxas District, Q.C., Philippines

20. If your relative's native alphabet is other than Roman letters, write his or her name and foreign address in the native alphabet.

(Name) Address (Include street, city, province and country):

N/A

21. If filing for your husband/wife, give last address at which you lived together. (Include street, city, province, if any, and country):

1640 Lincoln Park

Beaverton, Oregon

From:

05/07

To:

Present

22. Complete the information below if your relative is in the United States and will apply for adjustment of status.

Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the USCIS office in:

If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American consular post in:

Portland,
(City)Oregon
(State)Manila
(City)Philippines
(Country)**NOTE:** Designation of an American embassy or consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that post. Acceptance is at the discretion of the designated embassy or consulate.**D. Other information****1. If separate petitions are also being submitted for other relatives, give names of each and relationship.****2. Have you ever before filed a petition for this or any other alien?** ☐ Yes ☒ No

If "Yes," give name, place and date of filing and result.

WARNING: USCIS investigates claimed relationships and verifies the validity of documents. USCIS seeks criminal prosecutions when family relationships are falsified to obtain visas.**PENALTIES:** By law, you may be imprisoned for not more than five years or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws. In addition, you may be fined up to \$10,000 and imprisoned for up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.**YOUR CERTIFICATION:** I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.**E. Signature of petitioner.**

Teo Thanh Nguyen

Date June 11, 2008 Phone Number (503) 730-1493

F. Signature of person preparing this form, if other than the petitioner.

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name Signature Date

Address G-28 ID or VOLAG Number, if any.

Petition for Alien Fiancé(e), Sample Form I-129F (as used by a married couple) (page 1)

OMB No. 1615-0001; Expires 01/31/2010

Department of Homeland Security
U.S. Citizenship and Immigration Services**I-129F, Petition
for Alien Fiancé(e)****Do not write in these blocks.****For USCIS Use Only**

Case ID #	Action Block	Fee Stamp
A #		
G-28 #		
The petition is approved for status under Section 101(a)(5)(k). It is valid for four months from the date of action. _____		
Remarks:		

Part A. Start Here. Information about you.

1. **Name** (Family name in CAPS) (First) (Middle)
 ANDERSON Christa Lee

2. **Address** (Number and Street) Apt. #
 123 4th Street 2
 (Town or City) (State or Country) (Zip/Postal Code)
 San Diego CA 92120

3. **Place of Birth** (Town or City) (State/Country)
 Portland OR

4. **Date of Birth** (mm/dd/yyyy) 5. **Gender**
 04/18/1981 ☐ Male ☒ Female

6. **Marital Status**
☒ Married ☐ Single ☐ Widowed ☐ Divorced

7. **Other Names Used** (including maiden name)
 None

8a. **U.S. Social Security Number** 8b. **A#** (if any)
 122-33-4444

9. **Names of Prior Spouses** **Date(s) Marriage(s) Ended**
 None

10. **My citizenship was acquired through** (check one)
☒ Birth in the U.S. ☐ Naturalization
 Give number of certificate, date and place it was issued.
☐ Parents
 Have you obtained a certificate of citizenship in your name?
☐ Yes ☐ No
 If "Yes," give certificate number, date and place it was issued.

11. **Have you ever filed for this or any other alien fiancé(e) or husband/wife before?**
☐ Yes ☒ No
 If "Yes," give name of all aliens, place and date of filing, A# and result. (Attached additional sheets as necessary.)

Part B. Information about your alien fiancé(e).

1. **Name** (Family name in CAPS) (First) (Middle)
 CUEVAS Bernardo Cristobal

2. **Address** (Number and Street) Apt. #
 123 Calle Centro 42
 (Town or City) (State or Country) (Zip/Postal Code)
 Bogota Colombia

3a. **Place of Birth** (Town or City) (State/Country)
 Bucaramanga Colombia

3b. **Country of Citizenship**

4. **Date of Birth** (mm/dd/yyyy) 5. **Gender**
 07/24/1980 ☒ Male ☐ Female

6. **Marital Status**
☒ Married ☐ Single ☐ Widowed ☐ Divorced

7. **Other Names Used** (including maiden name)
 None

8. **U.S. Social Security #** 9. **A#** (if any)
 None

10. **Names of Prior Spouses** **Date(s) Marriage(s) Ended**
 Sonya Carcamo 11/02/2003

11. **Has your fiancé(e) ever been in the U.S.?**
☒ Yes ☐ No

12. **If your fiancé(e) is currently in the U.S., complete the following:**
He or she last arrived as a: (visitor, student, exchange alien, crewman, stowaway, temporary worker, without inspection, etc.)
 Arrival/Departure Record (I-94) Number
 Date of Arrival (mm/dd/yy) Date authorized stay expired, or will expire as shown on I-94 or I-95

INITIAL RECEIPT _____ RESUBMITTED _____ RELOCATED: Rec'd. _____ Sent _____ COMPLETED: Appv'd. _____ Denied _____ Ret'd. _____

Form I-129F (Rev. 07/30/07) Y

Sample Form I-129F (page 2)

Part B. Information about your alien fiancé(e). (Continued.)**13. List all children of your alien fiancé(e) (if any)**

Name (First/Middle/Last)	Date of Birth (mm/dd/yyyy)	Country of Birth	Present Address
Jorge Carcamo Cuevas	02/21/2002	Colombia	1100 Calle de Las Montañas, Bogota

14. Address in the United States where your fiancé(e) intends to live.

(Number and Street)

(Town or City)

(State)

123 4th Street

San Diego

CA

15. Your fiancé(e)'s address abroad.

(Number and Street)

(Town or City)

(State or Province)

123 Calle Centro #42

Bogota

(Country)

(Phone Number; Include Country, City and Area Codes)

Colombia

571 2223333

16. If your fiancé(e)'s native alphabet uses other than Roman letters, write his or her name and address abroad in the native alphabet.

(Name)

(Number and Street)

n/a

(Town or City)

(State or Province)

(Country)

17. Is your fiancé(e) related to you?☐ Yes ☒ No

If you are related, state the nature and degree of relationship, e.g., third cousin or maternal uncle, etc.

(Not a blood relation—we are married, and he will apply for a K-3 visa.)

18. Has your fiancé(e) met and seen you within the two-year period immediately preceding the filing of this petition?☒ Yes ☐ No

Describe the circumstances under which you met. If you have not personally met each other, explain how the relationship was established. If you met your fiancé(e) or spouse through an international marriage broker, please explain those circumstances in Question 19 below. Explain also in detail any reasons you may have for requesting that the requirement that you and your fiancé(e) must have met should not apply to you.

We originally met at a conference and were married in Colombia in 2006.

19. Did you meet your fiancé(e) or spouse through the services of an international marriage broker?☐ Yes ☒ No

If you answered yes, please provide the name and any contact information you may have (including internet or street address) of the international marriage broker and where the international marriage broker is located. Attach additional sheets of paper if necessary.

20. Your fiancé(e) will apply for a visa abroad at the American embassy or consulate at:

(City)

(Country)

Bogota

Colombia

NOTE: (Designation of a U.S. embassy or consulate outside the country of your fiancé(e)'s last residence does not guarantee acceptance for processing by that foreign post. Acceptance is at the discretion of the designated embassy or consulate.)

Sample Form I-129F (page 3)

Part C. Other information.**1. If you are serving overseas in the Armed Forces of the United States, please answer the following:**

I presently reside or am stationed overseas and my current mailing address is:

--	--

2. Have you ever been convicted by a court of law (civil or criminal) or court martialled by a military tribunal for any of the following crimes:

- Domestic violence, sexual assault, child abuse and neglect, dating violence, elder abuse or stalking. (Please refer to page 3 of the instructions for the full definition of the term "domestic violence.")
- Homicide, murder, manslaughter, rape, abusive sexual contact, sexual exploitation, incest, torture, trafficking, peonage, holding hostage, involuntary servitude, slave trade, kidnapping, abduction, unlawful criminal restraint, false imprisonment or an attempt to commit any of these crimes, or
- Three or more convictions for crimes relating to a controlled substance or alcohol not arising from a single act.

☐ Yes ☐ No

Answering this question is required even if your records were sealed or otherwise cleared or if anyone, including a judge, law enforcement officer, or attorney, told you that you no longer have a record. Using a separate sheet(s) of paper, attach information relating to the conviction(s), such as crime involved, date of conviction and sentence.

3. If you have provided information about a conviction for a crime listed above and you were being battered or subjected to extreme cruelty by your spouse, parent, or adult child at the time of your conviction, check all of the following that apply to you:

- ☐ I was acting in self-defense.
- ☐ I violated a protection order issued for my own protection.
- ☐ I committed, was arrested for, was convicted of, or plead guilty to committing a crime that did not result in serious bodily injury, and there was a connection between the crime committed and my having been battered or subjected to extreme cruelty.

Part D. Penalties, certification and petitioner's signature.

PENALTIES: You may by law be imprisoned for not more than five years, or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws, and you may be fined up to \$10,000 or imprisoned up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

YOUR CERTIFICATION: I am legally able to and intend to marry my alien fiancé(e) within 90 days of his or her arrival in the United States. I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.

Moreover, I understand that this petition, including any criminal conviction information that I am required to provide with this petition, as well as any related criminal background information pertaining to me that U.S. Citizenship and Immigration Services may discover independently in adjudicating this petition will be disclosed to the beneficiary of this petition.

Signature

Christa Anderson

Date (mm/dd/yyyy)

02/28/2008

Daytime Telephone Number (with area code)

858-555-1214

E-Mail Address (if any)

christa37@email.com

Part E. Signature of person preparing form, if other than above. (Sign below.)

I declare that I prepared this application at the request of the petitioner and it is based on all information of which I have knowledge.

*Signature**Print or Type Your Name**G-28 ID Number**Date (mm/dd/yyyy)**Firm Name and Address**Daytime Telephone Number (with area code)**E-Mail Address (if any)*

Petition to Remove Conditions on Residence, Sample Form I-751 (front)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0038; Expires 09/30/05

I-751, Petition to Remove Conditions on Residence

START HERE - Please type or print in black ink.**For USCIS Use Only****Part 1. Information about you.**

Family Name (Last Name)	Given Name (First Name)	Full Middle Name
HOLLIS	Nigel	Ian

Address: (Street Number and Name)	Apt. #
114 Fulton Street	6E

C/O: (In Care Of)

--	--

City	State/Province
New York	NY

Country	Zip/Postal Code
USA	10038

Mailing Address, if different than above: (Street Number and Name)	Apt. #

C/O: (In Care Of)

--	--

City	State/Province

Country	Zip/Postal Code

Date of Birth (mm/dd/yyyy)	Country of Birth	Country of Citizenship
8/17/1980	U.K.	U.K.

Alien Registration Number (#A)	Social Security # (if any)
A12345678	888-11-8888

Conditional Residence Expires on (mm/dd/yyyy)	Daytime Phone # (Area/Country Codes)
08/07/2010	212-555-1212

Part 2. Basis for petition. (Check one.)

- a. ☒ My conditional residence is based on my marriage to a U.S. citizen or permanent resident, and we are filing this petition together.
- b. ☐ I am a child who entered as a conditional permanent resident and I am unable to be included in a joint petition to remove the conditional basis of an alien's permanent residence (Form I-751) filed by my parent(s).

OR

My conditional residence is based on my marriage to a U.S. citizen or permanent resident, but I am unable to file a joint petition and I request a waiver because: **(Check one.)**

- c. ☐ My spouse is deceased.
- d. ☐ I entered into the marriage in good faith but the marriage was terminated through divorce/annulment.
- e. ☐ I am a conditional resident spouse who entered a marriage in good faith, and during the marriage I was battered by or was the subject of extreme cruelty by my U.S. citizen or permanent resident spouse or parent.
- f. ☐ I am a conditional resident child who was battered by or subjected to extreme cruelty by my U.S. citizen or conditional resident parent(s).
- g. ☐ The termination of my status and removal from the United States would result in an extreme hardship.

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	
☐ Petitioner Interviewed on _____	

Remarks

Action Block

To Be Completed by Attorney or Representative, if any. ☐ Fill in box if G-28 is attached to represent the applicant.
--

ATTY State License #

Petition to Remove Conditions on Residence, Sample Form I-751 (back)

Part 3. Additional information about you.

1. Other Names Used (including maiden name):

None

2. Date of Marriage (mm/dd/yyyy)

11/05/2008

3. Place of Marriage

New York, NY

4. If your spouse is deceased, give the date of death (mm/dd/yyyy)

5. Are you in removal, deportation or rescission proceedings?

☐ Yes☒ No

6. Was a fee paid to anyone other than an attorney in connection with this petition?

☐ Yes☒ No

7. Since becoming a conditional resident, have you ever been arrested, cited, charged, indicted, convicted, fined or imprisoned for breaking or violating any law or ordinance (excluding traffic regulations), or committed any crime for which you were not arrested?

☐ Yes☒ No

8. If you are married, is this a different marriage than the one through which conditional residence status was obtained?

☐ Yes☒ No

9. Have you resided at any other address since you became a permanent resident? (If yes, attach a list of all addresses and dates.)

☐ Yes☒ No

10. Is your spouse currently serving with or employed by the U.S. government and serving outside the United States?

☐ Yes☒ No

If you answered "Yes" to any of the above, provide a detailed explanation on a separate sheet(s) of paper. Place your name and Alien Registration Number (A#) at the top of each sheet and give the number of the item that refers to your response.

Part 4. Information about the spouse or parent through whom you gained your conditional residence.

Family Name

Beach

First Name

Sandra

Middle Name

Leah

Address

114 Fulton Street #6E

Date of Birth (mm/dd/yyyy)

12/20/1982

Social Security # (if any)

123-456789

A# (if any)

None

Part 5. Information about your children. List all your children. Attach other sheet(s) if necessary.

Name (First/Middle/Last)	Date of Birth (mm/dd/yyyy)	A # (if any)	If in U.S., give address/immigration status	Living with you?
Nadine Anne Hollis	12/02/2009		U.S. citizen	☒ Yes ☐ No
				☐ Yes ☐ No
				☐ Yes ☐ No
				☐ Yes ☐ No
				☐ Yes ☐ No

Part 6. Signature. Read the information on penalties in the instructions before completing this section. If you checked block "a" in Part 2, your spouse must also sign below.

I certify, under penalty of perjury of the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If conditional residence was based on a marriage, I further certify that the marriage was entered in accordance with the laws of the place where the marriage took place and was not for the purpose of procuring an immigration benefit. I also authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit sought.

Signature

Nigel Hollis

Print Name

Nigel Hollis

Date (mm/dd/yyyy)

06/01/2010

Signature of Spouse

Sandra Beach

Print Name

Sandra Beach

Date (mm/dd/yyyy)

06/01/2010

NOTE: If you do not completely fill out this form or fail to submit any required documents listed in the instructions, you may not be found eligible for the requested benefit and this petition may be denied.

Part 7. Signature of person preparing form, if other than above.

I declare that I prepared this petition at the request of the above person and it is based on all information of which I have knowledge.

Signature

Print Name

Date (mm/dd/yyyy)

Firm Name and Address

Daytime Phone Number

(Area/Country Codes)

E-Mail Address

(If any)

Biographic Information, Sample Form G-325A

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0008

G-325A, Biographic Information

(Family name) SALONGA	(First name) Fe	(Middle name) Valdez	☐ Male ☒ Female	Birthdate (mm/dd/yyyy) 03/07/1965	Citizenship/Nationality Filipino	File Number A
All Other Names Used (Including names by previous marriages) Fe Agnes Salonga			City and Country of Birth Manila, Philippines		U.S. Social Security # (If any) 210-76-9478	
Father Family Name SALONGA	First Name Amando	Date, City and Country of Birth (If Known) Manila, Philippines, 06-09-1941			City and Country of Residence Manila, Philippines	
Mother (Maiden name) VALDEZ	First Name Lourdes	Date, City and Country of Birth (If Known) Manila, Philippines, 12-05-1944			City and Country of Residence -do-	
Husband (If none, so state) or Wife	Family Name (For wife, give maiden name) None	First Name	Birthdate	City and Country of Birth	Date of Marriage	Place of Marriage
Former Husbands or Wives (If none, so state) Family Name (For wife, give maiden name)		First Name	Birthdate	Date and Place of Marriage	Date and Place of Termination of Marriage	
None						
Applicant's residence last five years. List present address first.						
Street and Number	City	Province or State	Country	Month	Year	To Month Year
741 12th Avenue	White Plains,	NY	U.S.A.	09	2003	Present Time
676 W. Houston Street	New York,	NY	U.S.A.	08	2001	08 2001
Applicant's last address outside the United States of more than one year.						
Street and Number	City	Province or State	Country	Month	Year	To Month Year
52-50 MBLA Court, Malaya St.	Marikina	Metro Manila	Philippines	since birth	08	2001
Applicant's employment last five years. (If none, so state.) List present employment first.						
Full Name and Address of Employer			Occupation (Specify)	Month	Year	To Month Year
Griffith School, 560 Lexington Avenue, NY, NY 10118			Teacher	03	2000	Present Time
Embassy of Japan, Buendia Ave., Makati, Metro Manila, Philippines			Secretary	05	1994	08 2001
Show below last occupation abroad if not shown above. (Include all information requested above.)						
see above						
This form is submitted in connection with application for: ☐ Naturalization ☒ Status as Permanent Resident ☐ Other (Specify):			Signature of Applicant Fe Valdez Salonga		Date 02/26/2008	
Submit all copies of this form.			If your native alphabet is in other than Roman letters, write your name in your native alphabet below:			

Penalties: Severe penalties are provided by law for knowingly and willfully falsifying or concealing a material fact.

Applicant: Be sure to put your name and Alien Registration Number
in the box outlined by heavy border below.

Complete This Box (Family Name)	(Given Name)	(Middle Name)	(Alien Registration Number)
SALONGA	Fe	Valdez	

Your Parents as Immigrants

A. Who Qualifies to Petition for Their Parents.....	104
1. You Must Be a U.S. Citizen.....	104
2. You Must Be at Least 21 Years Old	104
B. Who Qualifies As Your Parent.....	105
1. Natural Mother	105
2. Natural Father	105
3. Stepmother or Stepfather.....	106
4. Adoptive Mother and Father.....	107
C. Quick View of the Application Process.....	107
D. Detailed Instructions for the Application Process.....	107
1. The Visa Petition	107
2. The Green Card Application	108

If you are a U.S. citizen age 21 or over, but your parents are citizens of another country, your parents are your “immediate relatives” and you may request U.S. green cards for them. They must separately meet the other criteria for green card approval, however. One of the more difficult issues for immigrating parents is that, if they’re retired and not working, you may have to prove that you’ll be able to find health insurance coverage for them—and that coverage must not include any government support. This could be difficult or impossible if your parents have any serious preexisting health conditions.

Another important issue is whether your parents really want to come to the United States. Many are interested in family togetherness, but don’t really want to permanently leave the life they’ve made for themselves elsewhere. Remember that a green card is not just an easy travel pass—unless your parents are ready to settle down in the U.S. permanently, they could lose the green card by spending too much time overseas (and all your hard work could go down the drain).

However, one reason that some parents agree to come is that they can help other family members get green cards; see “Immigration Strategies After Your Parents Get Green Cards,” below.

A. Who Qualifies to Petition for Their Parents

To petition to get a green card for your parents, you must meet a couple of basic requirements.



CAUTION

If the U.S. petitioner has a criminal record, see an attorney. Under the Adam Walsh Child Protection and Safety Act of 2006, U.S. citizens and lawful permanent residents who have been convicted of any “specified offense against a minor” are prohibited from filing a family-based immigrant petition on behalf of any beneficiary (whether a child or not). USCIS will

run security checks on all petitions and may call the petitioner in for fingerprinting. If the petitioner has a conviction for one of the specified offenses against a minor, then the petition will not be approved unless USCIS determines that the U.S. petitioner poses no risk to the beneficiary.

1. You Must Be a U.S. Citizen

You must be a U.S. citizen to file a petition on behalf of your parents. You are a citizen of the United States if you were:

- naturalized by a U.S. federal court (after you applied and passed an exam)
- born in any of the 50 states of the United States or its territories—U.S. Virgin Islands, Puerto Rico, or Guam, or
- born outside the United States or its territories, if one of your parents was a U.S. citizen when you were born. See Chapter 21 for details or contact the U.S. Embassy; if you are not satisfied, consult a lawyer or other experienced naturalization professional. (See Chapter 25.)

2. You Must Be at Least 21 Years Old

As a U.S. citizen, you must be 21 years old or older to bestow the immigration benefit of a green card on your mother and your father as your immediate relatives.

If you were born in the United States to parents who live there illegally, 21 years will be a frustratingly long time to wait. In fact, because your parents may be ineligible to apply for green cards within the U.S. using the procedure called adjustment of status (see Chapter 18) but may instead have to leave the U.S. and apply through a U.S. consulate (see Chapter 19), your citizenship may turn out not to be much help to them. The reason is that too much time spent in the U.S. illegally can result in bars on returning to the U.S. after they leave (for three or ten years, based on illegal stays of six months or one year or more). If your family is in this situation, see an experienced immigration attorney.

Family Immigration Strategies After Your Parents Get Green Cards

By becoming U.S. permanent residents, your parents can file for the immigration of all their unmarried children—as family second preference 2A or 2B petitioners. If they become naturalized U.S. citizens, they can petition even for their married children—in the family 3rd preference category.

Although as a U.S. citizen you may have filed for your brothers and sisters in the family fourth preference category, your mother or father, after they become U.S. citizens, could secure a green card for them more quickly. It's okay to file more than one visa petition for the same person at the same time. (You can wait to see which priority date becomes current first.)

However, your parents must be aware that getting a green card does not automatically mean that their children can successfully obtain their own green cards. Your parents would also have to live (maintain residence) in the United States until their other children obtained their green cards, which will take years.

The rules on maintaining residency are complicated and require that the person maintain the United States as home. While the law allows travel overseas, most important family and business ties should be in the United States. A person in this situation should compile documentation that would prove he or she maintained permanent residence. Good evidence to support a claim of permanent residency can include:

- a lease, rental agreement, or title to property in the United States
- utility bills
- a driver's license or car registration, or
- state and federal tax returns.

If you or your parents have questions about whether you are properly maintaining permanent residence, consult an immigration attorney.

B. Who Qualifies As Your Parent

If you're from a traditional family—that is, you were born and raised by a married couple—you should have no problem petitioning for your parents to immigrate. However, the immigration law also recognizes some variations on the traditional family. Under certain circumstances, you can also petition for unmarried parents, stepparents, and adoptive parents, as described further below. You'll usually have to provide additional documents to prove the relationship, as also described below.

1. Natural Mother

If your mother was not married to your father when you were born, so that your mother's maiden name appears on your birth certificate, you can prove your relationship by presenting a copy of your birth certificate when you file the petition for your mother.

If your mother has changed her maiden name because she has married someone else, then also present her marriage certificate to show her change of name.

2. Natural Father

If your biological father did not marry your mother either before or after you were born, you can still petition for him as your immediate relative. You must also provide some evidence of your relationship.

- Make a copy of your birth certificate, baptismal certificate, or other religious records showing his name as your father. USCIS may require both you and your father to take a blood test as proof of your relationship.
- If you and your father did not live together before you turned 18, you must present proof that, up to the time you turned 21 years of age,

he maintained a father-child relationship with you by providing financial support, writing to you or your mother about your well-being, sending you birthday cards, holiday cards, and photographs, or perhaps naming you as a beneficiary to his life insurance.

- If you lived with your father before your 18th birthday, you must present proof that there was a father-child relationship, as evidenced by school records, photographs, letters, civil records, or written statements from friends and relatives.

If You, the Petitioner, Change Names

If you are a female U.S. citizen petitioning for your parents as immediate relatives, you may have changed your maiden name, which appears on your birth certificate. You may now be using your married name—that is, your husband's surname.

Therefore, in addition to your birth certificate to prove the parent-child relationship, you must also attach your marriage certificate to show your change of name when you send the Petition for Alien Relative, Form I-130, for your mother or father.

If you have changed your name by petitioning the court, you must attach a final court judgment as proof of that change.

3. Stepmother or Stepfather

If your father or mother marries somebody other than your biological parent before you turn 18 years of age, the person he or she marries becomes your stepmother or stepfather.

When you file a petition for your stepmother or stepfather as your immediate relative (by submitting the usual petition Form I-130), add to it the following documents:

- your birth certificate showing the name of your mother or father, and
- the marriage certificate of your mother or father to show the name of her husband or his wife, who has become your stepparent.

For you to petition for your stepparent, the marriage must have occurred before your 18th birthday. If the marriage happened after your 18th birthday, then say, “I love you, but I cannot claim you as my immediate relative for immigration into the United States.”

But all is not lost.

Your natural mother or father, after qualifying as your immediate relative and obtaining a green card, can petition for your stepparent who is now the spouse of a permanent resident—2A, the second preference beneficiary. Unfortunately, however, the stepparent will have to wait a few years until a visa becomes available in this category.

Immigrant Story: Petitioning for a Surviving Stepparent

Luzmaria, originally from El Salvador, married a U.S. citizen at age 25, and became a U.S. citizen herself at age 29. She then filed visa petitions for her father and for her stepmother, who her father married when Luzmaria was 14.

Sadly, Luzmaria's father died a few months later. Luzmaria was doubly heartbroken, thinking that now her stepmother would not be eligible to immigrate.

However, because the stepmother continues to fit the criteria for immediate relative of a U.S. citizen (having married Luzmaria's father when Luzmaria was under 18), she is able to continue with her application and eventually receive a U.S. green card.

4. Adoptive Mother and Father

Suppose you were adopted by a non-U.S. citizen before your 16th birthday. If you are a U.S. citizen and you are now 21 years or older, you can petition for your adoptive mother and father as your immediate relatives.

When you file the visa petition (Form I-130), you must also submit:

- the court decree of your adoption
- your birth certificate showing the name of your adopting parents as your father and mother, and
- a statement showing the dates and places you have lived together.



CAUTION

Adopted children cannot petition for their natural parents. When you were adopted, your natural parents gave up all parental ties with you. Therefore, you will never be able to petition for your natural parents as your immediate relatives. The adoption decree cuts off all legal ties between you and your natural parents.

C. Quick View of the Application Process

To get a green card for your parent, you must begin the process by preparing a visa petition (Form I-130, together with certain documents). Form I-130 serves to prove to the immigration authorities that your parents are truly and legally yours. After that petition is approved (in most cases), your parents must complete their half of the process by submitting a green card application and attending an interview, sometimes but not always with you accompanying them. Their application serves to prove that not only do they qualify as parents of a U.S. citizen, but that they're otherwise eligible for U.S. permanent residence.

However, the details of when and how your parents complete their half of the process depend on whether your parents are living overseas or in the United States, as described next.

D. Detailed Instructions for the Application Process

Now we'll break the application process down into individual procedures, some of which will be covered in this chapter, and others in later chapters—we'll tell you exactly where to turn to for your situation.

1. The Visa Petition

Let's start by discussing the visa petition, which all people petitioning for their parents must prepare to begin the process. You'll need to assemble:

- ☐ Form I-130, Petition for Alien Relative (available at www.uscis.gov; see the sample at the end of this chapter)
- ☐ documents showing your U.S. citizenship
- ☐ a copy of your birth certificate, showing your name as well as your mother's name, if filing for your mother, and the names of both parents, if filing for your father
- ☐ a copy of the marriage certificate of your parents if you are filing for your father; your stepparents' marriage certificate, if you are filing for either stepparent
- ☐ a copy of your adoption decree, if you are filing for your adoptive parent
- ☐ the filing fee, currently \$355, in a certified check or money order payable to the Department of Homeland Security. Don't send cash.

Once you've assembled all these items, make a copy of everything (including the check or money order) for your records. It's also a good idea to write a cover letter, explaining what type of visa petition it is (for example, saying "I am a U.S.

citizen, filing the enclosed visa petition on behalf of my parents.” The letter should include a bulleted list, much like the one above, of everything you’re sending. This will help USCIS see that you’re organized. It will help you, too, to make sure that nothing has been forgotten.

If your parents are not in the United States, mail all these documents and the fee by certified mail to the USCIS Chicago “lockbox,” which will forward it to the appropriate USCIS office. (See the USCIS website for contact details.) If your parents are in the United States, they may be able to file directly for adjustment of status (see Chapter 18).

2. The Green Card Application

The next step in your parents’ immigration process depends on where they’re located. If they’re in the United States, you need to start by figuring out whether they are eligible to adjust status (apply for their green card) here. See Chapter 18, Section A, to determine this. (If they are on valid visas, then they are probably eligible. However, they must be careful—if they obtained a tourist or other visa with the secret intention of applying for a green card after they got here, that could be visa fraud. They can be denied the green card based on this fraud.)



NEXT STEP

If they are allowed to adjust status in the U.S.

You can mail the I-130 visa petition in combination with an adjustment of status application to a USCIS office as also described in Chapter 18. Eventually they will be fingerprinted, called in for an interview at a local USCIS office, and hopefully approved for U.S. residency.



NEXT STEP

If your parents do not qualify to adjust status but are currently in the U.S. See a lawyer if any of that time has been unlawful—that is, after an illegal entry, past the date of their Form I-94, or in violation of their status. If so, leaving the U.S. could result in them

being prevented from reentering for three or ten years, depending on the length of their unlawful stay.



NEXT STEP

If your parents’ current stay in the U.S. has been lawful and they plan to leave on time, or if they’re already living overseas. Their next step is to await USCIS approval of the Form I-130 visa petition and then go through consular processing, as described in Chapter 19. Eventually they will be called in for an interview at their local U.S. consulate, at which time they will hopefully be approved for an immigrant visa to enter the United States and claim their permanent residency.



CROSS REFERENCE

See Chapter 24 for important information on how your parents can protect their right to keep the green card.

Be Kind to the Elderly

If your mother or father is elderly, take some time to help them get acquainted with the customs and cultural habits of the country.

Introduce them to the senior citizen center located in their new neighborhood. Teach them how to use the public transportation system, including precautions to be taken if you live in a big city. Bring them to the cultural or popular entertainment activities available in your area.

It is unfair to make your parents mere babysitters for your young children. They have already done all the childrearing they were responsible for when they raised you. Pay them a decent amount if they take care of your children. Do not abuse their kindness by taking advantage of their presence in your home to do the work you should be doing.

Petition for Alien Relative, Sample Form I-130 (as used for immigrating parents) (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB #1615-0012; Expires 11/30/07

I-130, Petition for Alien Relative

DO NOT WRITE IN THIS BLOCK - FOR USCIS OFFICE ONLY		
A# Section of Law/Visa Category ☐ 201(b) Spouse - IR-1/CR-1 ☐ 201(b) Child - IR-2/CR-2 ☐ 201(b) Parent - IR-5 ☐ 203(a)(1) Unm. S or D - F1-1 ☐ 203(a)(2)(A) Spouse - F2-1 ☐ 203(a)(2)(A) Child - F2-2 ☐ 203(a)(2)(B) Unm. S or D - F2-4 ☐ 203(a)(3) Married S or D - F3-1 ☐ 203(a)(4) Brother/Sister - F4-1	Action Stamp 	Fee Stamp Petition was filed on: _____ (priority date) ☐ Personal Interview ☐ Previously Forwarded ☐ Pet. ☐ Ben. "A" File Reviewed ☐ I-485 Filed Simultaneously ☐ Field Investigation ☐ 204(g) Resolved ☐ 203(a)(2)(A) Resolved ☐ 203(g) Resolved
Remarks: 		

A. Relationship You are the petitioner. Your relative is the beneficiary.

1. I am filing this petition for my: ☐ Husband/Wife ☒ Parent ☐ Brother/Sister ☐ Child	2. Are you related by adoption? ☐ Yes ☒ No	3. Did you gain permanent residence through adoption? ☐ Yes ☒ No
--	---	---

B. Information about you

1. Name (Family name in CAPS) (First) (Middle) SOLOMOS Evadne Helia	2. Address (Number and Street) (Apt. No.) 121 3rd Street (Town or City) (State/Country) (Zip/Postal Code) Baton Rouge LA/USA 70808	3. Place of Birth (Town or City) (State/Country) Athens Greece
4. Date of Birth 07/03/1974	5. Gender ☐ Male ☒ Female	6. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name) Evadne Helia ADIMIDIS		
8. Date and Place of Present Marriage (if married) 03/17/1997, New Orleans, LA		
9. U.S. Social Security (if any) 111-22-3333	10. Alien Registration Number n/a	
11. Name(s) of Prior Husband(s)/Wife(s) 12. Date(s) Marriage(s) Ended 		

C. Information about your relative

1. Name (Family name in CAPS) (First) (Middle) ADIMIDIS Halimeda Madora	2. Address (Number and Street) (Apt. No.) Galanou 25 (Town or City) (State/Country) (Zip/Postal Code) Athens Greece 105 53	3. Place of Birth (Town or City) (State/Country) Santorini Greece
4. Date of Birth 10/12/1956	5. Gender ☐ Male ☒ Female	6. Marital Status ☐ Married ☐ Single ☒ Widowed ☐ Divorced
7. Other Names Used (including maiden name) Halimeda Madora MAMALIS		
8. Date and Place of Present Marriage (if married) 		
9. U.S. Social Security (if any) None	10. Alien Registration Number None	
11. Name(s) of Prior Husband(s)/Wife(s) 12. Date(s) Marriage(s) Ended Cyrus Danous ADIMIDIS 11/04/2001		

13. If you are a U.S. citizen, complete the following:

- My citizenship was acquired through (check one):
- ☐ Birth in the U.S.
- ☒ Naturalization. Give certificate number and date and place of issuance.
 321234, 12/03/2003, New Orleans
- ☐ Parents. Have you obtained a certificate of citizenship in your own name?
☐ Yes. Give certificate number, date and place of issuance. ☐ No

14. If you are a lawful permanent resident alien, complete the following:

Date and place of admission for or adjustment to lawful permanent residence and class of admission.

14b. Did you gain permanent resident status through marriage to a U.S. citizen or lawful permanent resident?

☒ Yes ☐ No

13. Has your relative ever been in the U.S.? ☒ Yes ☐ No**14. If your relative is currently in the U.S., complete the following:**

He or she arrived as a:
 (visitor, student, stowaway, without inspection, etc.)

Arrival/Departure Record (I-94) **Date arrived**

| |

Date authorized stay expired, or will expire, as shown on Form I-94 or I-95

15. Name and address of present employer (if any)

None

Date this employment began

16. Has your relative ever been under immigration proceedings?

☒ No ☐ Yes Where _____ When _____
☐ Removal ☐ Exclusion/Deportation ☐ Rescission ☐ Judicial Proceedings

INITIAL RECEIPT RESUBMITTED RELOCATED: Rec'd Sent COMPLETED: App'd Denied Ret'd

Sample Form I-130 (page 2)

C. Information about your alien relative (continued)**17. List husband/wife and all children of your relative.**

(Name)	(Relationship)	(Date of Birth)	(Country of Birth)
Kadmus ADIMIDIS	Son	08/07/1976	Greece

18. Address in the United States where your relative intends to live.

(Street Address)	(Town or City)	(State)
131 3rd Street	Baton Rouge	Louisiana

19. Your relative's address abroad. (Include street, city, province and country) Phone Number (if any)

Galanou 25, 105 53 Athens, Greece

20. If your relative's native alphabet is other than Roman letters, write his or her name and foreign address in the native alphabet.

(Name)	Address (Include street, city, province and country):

21. If filing for your husband/wife, give last address at which you lived together. (Include street, city, province, if any, and country):

From: To:

22. Complete the information below if your relative is in the United States and will apply for adjustment of status.

Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the USCIS office in:

If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American consular post in:

(City)	(State)	(City)	(Country)

NOTE: Designation of an American embassy or consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that post. Acceptance is at the discretion of the designated embassy or consulate.**D. Other information****1. If separate petitions are also being submitted for other relatives, give names of each and relationship.****2. Have you ever before filed a petition for this or any other alien?** ☐ Yes ☒ No

If "Yes," give name, place and date of filing and result.

WARNING: USCIS investigates claimed relationships and verifies the validity of documents. USCIS seeks criminal prosecutions when family relationships are falsified to obtain visas.**PENALTIES:** By law, you may be imprisoned for not more than five years or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws. In addition, you may be fined up to \$10,000 and imprisoned for up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.**YOUR CERTIFICATION:** I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.**E. Signature of petitioner.**

Evadne H. Solomos

Date 7/9/2008

Phone Number (225) 555-1313

F. Signature of person preparing this form, if other than the petitioner.

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name _____ Signature _____ Date _____

Address _____ G-28 ID or VOLAG Number, if any. _____

Child Immigrants

A. Who Qualifies.....	112
B. Definition of “Child”	113
1. Child of Married Parents.....	113
2. Child of Unmarried Parents.....	113
3. Legitimated Child of Recently Married Parents.....	114
4. Stepchild.....	114
5. Adopted Child.....	114
C. Quick View of the Application Process.....	116
D. Detailed Instructions for the Application Process.....	116
1. Preparing the Form I-130 Visa Petition	116
2. Where to Submit the I-130 Visa Petition	117
E. Automatic Citizenship for Some Children.....	119
1. Children Living in the United States.....	119
2. Children Living Overseas.....	119

When Congress writes laws regulating immigration, it aims to keep families together. Foreign-born children of U.S. citizens or permanent residents are eligible to get a green card when a parent files a petition for them. However, you need to look carefully at who qualifies as a “child.”

Note: This chapter addresses only children whose parents have already immigrated to the United States. The situation of children accompanying an immigrating parent is covered in other chapters of this book.

A. Who Qualifies

A person is eligible for a green card if he or she is the child of:

- a U.S. citizen, and is under 21 years of age (immediate relative)
- a U.S. citizen, if the child is over 21 and not married (family first preference category)
- a U.S. citizen, if the child is over 21 and married (family third preference category)
- a lawful permanent resident, if the child is not married and is under 21 (family second 2A preference), or
- a lawful permanent resident, if the child is over 21 years old and not married (family second 2B preference). If the child was formerly married, but is now divorced or a widow or widower, or if the marriage has been annulled, the child can still immigrate in the 2B category.



CAUTION

If the U.S. petitioner has a criminal record, see an attorney. Under the Adam Walsh Child Protection and Safety Act of 2006, U.S. citizens and lawful permanent residents who have been convicted of any “specified offense against a minor” are prohibited from filing a family-based immigrant petition on behalf of any beneficiary (whether a child or not). USCIS will run security checks on all petitions and may call the

petitioner in for fingerprinting. If the petitioner has a conviction for one of the specified offenses against a minor, then the petition will not be approved unless USCIS determines that the U.S. petitioner poses no risk to the beneficiary.

Children of Permanent Residents Wait Longer

Around 88,000 immigrant visas are allowed to be given out each year to the spouses and unmarried children under 21 years of age of green card holders. But only around 26,000 visas per year can go to their unmarried children over 21 years of age. Plus, the demand in both categories is far greater than the supply. The law placed no time limits on processing the applications.

The current waiting period for a spouse and unmarried children under the age of 21 (category 2A) is about five years. Children over 21 (category 2B) should be prepared to wait nine years or more for their immigrant visas.

The green card–holding parent or spouse may be able to hurry the process along by becoming a U.S. citizen.



CAUTION

Caution for children who get married or turn 21 before receiving their green cards. The visa categories described above must fit the children not only when the visa application process is begun, but at the very end. This end may be years later, when the child attends the interview at which he or she is approved for the green card, and also, if coming from overseas, when the child actually enters the United States. If, for example, the child of a permanent resident gets married, his or her green card eligibility will be destroyed (at least until the parent becomes a U.S. citizen and starts the petition process all over again). Tell your children to consider not getting married if they want to protect their right to immigrate.

Of course, children have less control over getting older and ultimately turning 21. A law called the Child Status Protection Act helps some, though not all, children facing this problem. For details, see Chapter 5, “Situations Where Children Are Protected From Switching Categories.”

B. Definition of “Child”

Immigration law recognizes many different meanings of the word “child” as it relates to obtaining a green card. This definition is important because it determines what kind of documents USCIS will require when the visa petition is filed.

1. Child of Married Parents

When a child is born to a man and a woman who are married to each other, the child is, in legal terms, their legitimate child. If the mother will be filing the visa petition, the only document necessary to establish their relationship is the birth certificate showing the name of the mother and of the child.

If the father will be filing the visa petition, to show the relationship of father and child, two documents are necessary:

- the birth certificate, which shows the name of the father and the child, and
- the marriage certificate, which shows that the mother and the father were married before the birth of the child.

2. Child of Unmarried Parents

A woman and a man who conceive a child are that child’s natural parents. Proving this relationship for immigration purposes requires extra steps if the woman and man are not married to one another.

Proving through mother. When a child is born of a woman who is not married to the child’s father, the child is her natural child.

To establish the relationship of mother and child, the only document necessary is the birth certificate showing the name of the mother and the name of the child.

If the mother’s maiden name as shown on the birth certificate of her child differs from her present name, the mother must present the document showing that her name was changed. Usually, she has changed her name after marrying. The marriage certificate will then verify that the mother named on the birth certificate and the mother on the immigration form are the same person.

Proving through father. Even if the father of the child is not married to the mother when the child is born, both the father and mother can petition for the child to immigrate into the United States.

But it may become complicated to prove the father-child relationship. First, the father must establish that he is really the biological father of the child. The birth certificate is the best proof, if his name appears as the father of the child.

If his name is not on the birth certificate, the father should apply to his civil registry requesting that his name be added to the birth certificate as the father of the child. He should do this before the child turns 18.

In some countries, the father may have to acknowledge before a civil court, government agency, or civil registry that he is the father of the child. USCIS requires such acknowledgment to occur before the child turns 18 years old.

If none of this proof is available, a blood test, accompanied by an affidavit from the mother stating that the man is the father of the child, may be acceptable.

In addition, the father must show that he was not simply the biological father, but that there was a father-child relationship. He must provide documents to prove that:

- the father and child lived together before the child turned 18, or

- there was a true father-child relationship before the child turned 18 or got married.

This relationship can be shown by letters written by one to the other; canceled checks or other proof of money sent regularly to support the child; photos of both of them together; school records showing the father's name; sworn statements from at least two people who know of the father-child relationship; U.S. income tax returns showing the child listed as a dependent; birthday cards; or Valentine, Christmas, or other holiday cards sent and received.

In short, almost any evidence may help show that the father did not abandon the child, but kept up paternal ties before the child turned 18 years old.

Some Countries Require No Proof

The governments in some countries, such as China, Haiti, Trinidad and Tobago, and Jamaica, have passed laws erasing the legal distinction between children born to parents who are married to one another and those whose parents are not married.

But if these laws were recently passed, the father has to show USCIS that the law was changed before the child turned 18 years of age. If he can show this, he need not submit all those letters, sworn statements, school records, and other proof mentioned above.

3. Legitimated Child of Recently Married Parents

When a child is born to a man and a woman who are not married to each other when the child was born but who marry each other before the child turned 18 years of age, the child is considered to be a legitimated child.

To prove the relationship of mother and child, only the birth certificate is necessary.

To prove the relationship of father and child, two documents are needed: the birth certificate and the marriage certificate.

4. Stepchild

When the mother or the father of a child marries a person who is not the biological parent of that child, a step-relationship is created between the new parent and the child.

For there to be any immigration benefit, the marriage between the child's parent and stepparent must occur before the child turns 18 years of age. A U.S. citizen or green card-holding spouse can petition for a foreign-born spouse's children (as his or her stepchildren) at any time, as long as the children were under 18 years of age at the time of the marriage.

In addition to the birth certificate of the child, a marriage certificate is necessary to show that the step-relationship was created by a marriage that occurred before the child's 18th birthday.

5. Adopted Child

For immigration purposes, an adopted child is a child who has been adopted according to the laws of the country of his or her birth, or the U.S. state of the adopting parents, as long as the adoption is finalized before the child turns 16 years of age. You can also adopt a child between the ages of 16 and 18 if it's the natural sibling of a younger child who you've either already adopted or are adopting at the same time as the older one. "Natural sibling" means the children share at least one biological parent. Unlike an orphan child (discussed in Chapter 10), the adopted child is neither orphaned nor abandoned by his or her natural parents.

EXAMPLE 1:

If you were 17 years old when you were adopted by your naturalized U.S. uncle, you may inherit his wealth, but you will not be able to obtain a green card as the adopted child of a U.S. citizen.

EXAMPLE 2:

If you were 15 years old when you were adopted by U.S. citizens living outside the U.S., and you live with them for the next 13 years, until you're 28—you can obtain a green card. It doesn't matter how old you are when you begin the immigration process, so long as you were under age 16 when you were adopted.

USCIS requires two additional circumstances before an adopted child can become eligible for a green card.

- The petitioner—who may, at least in theory, be either a U.S. citizen or a permanent resident—must have had legal custody of the adopted child for at least two years. This means that a court or government body issued either a legal guardianship or an actual adoption decree two years before the immigrant petition was filed.
- The adopted child must have lived with the adopting parents at least two years before the petition was filed.

The child may live with the adopting parent, or may be under the legal custody of the adopting parent for two years, either before or after the adoption becomes final by court decree. It does not matter. However, the child must live with the adopting parents for two years and must be in the legal custody of the adopting parents for two years. When these two periods have occurred, either at the same time or one after the other, the immigrant petition can be filed.

Because of these requirements, the most practical way the adopted child can get an immigrant visa is, in most cases, for one or both of the adopting parents to live in the foreign country with the alien child. This is practically impossible for lawful permanent resident parents, who must maintain their U.S. residences in order to keep their green cards.

But what if you're a U.S. citizen and the child you want to adopt is already living in the United States?

This gets complicated, and you'll probably want to get an immigration lawyer's help. But let's take a brief look at the three main possibilities, after first reviewing one bit of good news: A child under 18 can't rack up "unlawful presence" in the U.S., and therefore you probably won't have to worry about the three- and ten-year bars (described in Chapter 4) being used to block the child from returning to the U.S. if, for example, he or she needs to leave and have a visa interview at a U.S. consulate. (But watch the timing carefully if you're adopting a child who's already close to 16.) However, a child who is staying in the U.S. without a visa or other permission from the immigration authorities can still be arrested and removed (deported)—though in practice, USCIS would rarely do that unless the child committed a serious crime.

The child entered the U.S. illegally. If the child entered illegally, you can petition a court for legal custody, but that just makes you the rightful parent. It doesn't make the child's U.S. stay legal for immigration purposes. At the end of the two years of legal custody and having the child live with you, you can file the visa petition, but will ultimately have to take the child to a U.S. consulate abroad for the visa interview (which completes the green card application process).

The child entered the U.S. legally but has overstayed. If the child originally came to the U.S. on a visa, but has stayed past the expiration date on his or her I-94 card (a small white card tucked into the passport), you can petition a court for legal custody. However, being granted custody just makes you the rightful parent. It doesn't make the child's U.S. stay legal for immigration purposes. At the end of the two years custody and residence, you can file a visa petition and an adjustment of status application with USCIS. (Note that this is a different procedure than for the child who entered illegally; the combination of your U.S. citizenship and the child's legal entry saves this child from having to do part of the green card application

through a U.S. consulate in another country). However, don't interpret this section to mean that you should go to another country, adopt a child, then use a tourist visa to bring the child back to the U.S. in hopes of completing the application process here. That could probably be interpreted as visa fraud, and destroy the child's chances of immigrating.

The child entered the U.S. legally and is still legal. If the child originally came to the U.S. on a visa, and the expiration date on his or her I-94 card (a small white card tucked into the passport), hasn't passed, you're in relatively good shape. You can petition a court for legal custody, making you the child's rightful parent. Then the question becomes, when does the I-94 run out? If the child is on a student visa, it might easily run for the two years you'll need before submitting the visa petition and green card application (without leaving the U.S.). If not, see the paragraph above this one—and talk to a lawyer. Though certain visa stays can be extended, you wouldn't want to ruin the entire plan by lying about the reasons for the extension.

Another alternative may be to process the immigration papers required for an orphan child. (See Chapter 10.)

New Adoption Opportunities on the Way?

In October 2000, President Clinton signed into law the Intercountry Adoption Act of 2000, which implements the Hague Convention on International Adoption. This is expected to streamline and broaden opportunities for adoption of children from overseas. However, before this law is actually implemented, the U.S. government must first set up a Central Adoption Authority and issue regulations—all of which is moving very slowly.

C. Quick View of the Application Process

For someone to get a green card as a child, his or her U.S. citizen or permanent resident parent must begin the process by mailing what's called a "visa petition" (using Form I-130) to USCIS. We're going to assume that the person reading this is the parent.

Form I-130 serves to prove to the immigration authorities that your children are truly and legally yours. After that petition is approved (in most cases), your children complete their half of the process (with your help, of course) by submitting a green card application and attending an interview, most likely with you accompanying them. Their application serves to prove that not only do they qualify as children of a U.S. citizen or permanent resident, but that they're otherwise eligible for U.S. permanent residence.

However, the details of when and how your children complete their half of the process depend on whether they are living overseas or in the United States, as described next.

D. Detailed Instructions for the Application Process

Now we'll break the application process down into individual procedures, some of which will be covered in this chapter, and others in later chapters—we'll tell you exactly where to turn to for your situation.

1. Preparing the Form I-130 Visa Petition

We'll start by discussing the visa petition, which all parents of immigrating children must prepare to begin the process. You'll need to assemble:

- ☐ Form I-130, Petition for Alien Relative (available at www.uscis.gov; see sample at the end of this chapter)
- ☐ Form G-325A, Biographic Information (signed by child; see sample at end of chapter)
- ☐ birth certificate of child
- ☐ parents' marriage certificate
- ☐ documents proving the parent's U.S. citizenship or permanent residence (see Chapter 22), and
- ☐ filing fee for Form I-130, currently \$355, payable by check or money order to the U.S. Department of Homeland Security.

In cases where the child is adopted, the following documents must also be presented:

- ☐ the adoption decree showing adoption prior to 16 years of age
- ☐ documents showing legal custody for at least two years
- ☐ documents proving that the adopted child has resided with the adopting parent or parents for at least two years (such as school and medical records)
- ☐ a birth certificate of the child showing the adopting parent as mother or father by reason of the adoption decree, and
- ☐ documents showing the marital status of the petitioning parent.

Once you've assembled all these items, make a copy for your records. It's also a good idea to write a cover letter, explaining what type of visa petition it is (for example, saying "I am a U.S. citizen, filing the enclosed visa petition on behalf of my married daughter."). The letter should include a bulleted list, much like the one above, of everything you're sending. This will help USCIS see that you're organized. It will help you, too, to make sure that nothing has been forgotten.

2. Where to Submit the I-130 Visa Petition

Once you've assembled and copied everything, your next step, including where to send the visa petition, depends on which visa category your child will be applying in and where the child is now, as detailed below.



NEXT STEP

Next step for unmarried children under age 21 of U.S. citizens (immediate relatives), if the children live overseas. The parent should mail the visa petition to USCIS's Chicago "lockbox," which will forward it to a USCIS office appropriate for the parent's geographical area. Soon after the visa petition is approved, the U.S. consulate serving the country where the child lives will take over. The child will apply for the immigrant visa and green card through consular processing, described in Chapter 19.



NEXT STEP

Next step for unmarried children under age 21 of U.S. citizens (immediate relatives) if the children live in the United States. If the child is eligible for adjustment of status (as explained in Chapter 18), then the parent shouldn't file the visa petition by itself, but should combine it with the adjustment of status application, and then mail it according to the instructions in Chapter 18. If, however, the child is not eligible to adjust status, and has spent any time in the U.S. illegally or out of status, consult an experienced immigration attorney.



NEXT STEP

Next step for all children of U.S. permanent residents, and married or over-21 children of U.S. citizens (preference relatives) if the children live overseas. The parent should mail the visa petition to USCIS's Chicago "lockbox," which will forward it to the USCIS office appropriate for the parent's geographical area. After the visa petition is approved, the child will be put on a waiting list, based on his or her priority

date. When the priority date becomes “current,” the U.S. consulate serving the country where the child lives will take over. The child will apply for the immigrant visa and green card through “consular processing,” described in Chapter 19.



NEXT STEP

Next step for all children of U.S. permanent residents and married or over-21 children of U.S. citizens (preference relatives) if the children live in the United States. The parent should mail the visa petition to USCIS’s Chicago “lockbox,” which will forward it to the appropriate USCIS office for the parent’s geographical area. After the visa petition is approved, the child will be put on a waiting list, based on his or her priority date. It will be many years before the priority date becomes current, during which time the mere filing of a visa petition gives the child no rights to remain in the United States (though many do, illegally). After the child’s priority date becomes current, then:

- If the child is still living in the U.S. and is eligible for adjustment of status (unlikely), see Chapter 18 for instructions.
- If the child is living in the U.S. and is not eligible for adjustment of status, or has left the U.S. but spent more than six months here illegally before leaving, see an experienced immigration attorney for help.
- If the child left the U.S. without having spent too much time there illegally, you can safely continue the process, and the U.S. consulate serving the country where the child lives will take over. The child will apply for the immigrant visa and green card through consular processing, described in Chapter 19.

Immigrant Story: Children Nearing Age 21

Rajiv, a U.S. permanent resident, petitioned for his three children to come to the United States (they live in India). When he first filed the I-130 petition, they were barely teenagers. But with people in category 2A taking about five years to be given an immigrant visa, the children are 17, 19, and 20 by the time their priority dates are close to current.

Despite their hopes, the oldest one, Sandip, turns 21 while they’re still waiting. Sandip automatically drops into category 2B, which means a longer wait (probably another four years).

The family’s priority date becomes current the day before the second child, Ayanna, turns 21. Rajiv is in a panic, because she didn’t have time to turn in her green card application. But luckily, he discovers that under the Child Status Protection Act, so long as Ayanna files her green card application one year from the date her priority date became current, she “locks in” her age at 21 minus the number of days her visa petition was awaiting USCIS approval. (Since approvals almost always take several months, this is all but guaranteed to return someone’s age to less than 21). So long as Ayanna acts soon, she doesn’t have to worry about being 21.

The last child, still only 19 years old, doesn’t need to worry. Like Ayanna, he can immigrate in category 2A (unless he ruins his eligibility by getting married).

E. Automatic Citizenship for Some Children

In 2000, Congress passed important new legislation allowing many children living in the U.S. with green cards to become citizens automatically if they have at least one U.S. citizen parent. Natural-born as well as adopted children can benefit from these new laws.

The law is slightly less helpful for children living overseas, who must go through an application process in order to claim their U.S. citizenship.

1. Children Living in the United States

For natural-born children to qualify for automatic citizenship, one parent needs to be a U.S. citizen, the child must have a green card and be living in the legal and physical custody of the U.S. citizen parent, and the child must still be under age 18 when all of these conditions are fulfilled.

For adopted children to qualify, one of the parents must be a U.S. citizen, a full and final adoption must have occurred, the child must be living in the United States after having entered on an immigrant visa (meaning the child is a green card holder), and the child must still be under age 18 at the time that all these things become true.

Though the process is automatic—and USCIS tries to send such children certificates of citizenship within six weeks of when they get their green cards—it's an excellent idea for such children to also apply for U.S. passports as proof of their U.S. citizen status.

EXAMPLE:

Lorna is 16 years old and living in Mexico. Some years ago, her father, a U.S. permanent resident, petitioned for her to immigrate. Even before her priority date became current,

however, he became a U.S. citizen, so the process was speeded up. Lorna successfully applies for an immigrant visa through consular processing, and enters the United States to live with her father.

Almost as soon as Lorna enters the U.S., she automatically becomes a U.S. citizen, because she (1) has a U.S. citizen parent, (2) has a green card, (3) is living in the citizen parent's legal and physical custody, and (4) was still under 18 when the first three things became true. USCIS should, recognizing her status, automatically send her a citizenship certificate. (Note: If Lorna's father had become a citizen after she got her green card and come to the U.S., but before she turned 18, USCIS wouldn't realize she'd become an automatic citizen, and Lorna would have to request a certificate to prove it.)

2. Children Living Overseas

For children who are living overseas, the process is somewhat more complex. Either natural-born or adopted children may qualify for automatic citizenship, but they need to have one U.S. citizen parent; that parent or the parent's parent must have been physically present in the U.S. for five years after the age of 14; the child must be visiting the U.S. on a temporary visa or other lawful means of entry; the child must live in the legal and physical custody of the U.S. citizen parent in their overseas home; and the child must remain under the age of 18 and in valid visa status until USCIS makes its decision on the citizenship application.

In practice, these conditions are very hard to meet. You might wish to consult with a lawyer. The application is made on Form N-600 for natural-born children and N-600K for adopted children. For a sample of Form N-600, see the end of the chapter. For further instructions, see the USCIS website at www.uscis.gov.

Petition for Alien Relative, Sample Form I-130 (as used for immigrating children) (page 1)

Department of Homeland Security U.S. Citizenship and Immigration Services		OMB #1615-0012; Expires 11/30/07 I-130, Petition for Alien Relative					
DO NOT WRITE IN THIS BLOCK - FOR USCIS OFFICE ONLY							
A# Section of Law/Visa Category ☐ 201(b) Spouse - IR-1/CR-1 ☐ 201(b) Child - IR-2/CR-2 ☐ 201(b) Parent - IR-5 ☐ 203(a)(1) Unm. S or D - F1-1 ☐ 203(a)(2)(A) Spouse - F2-1 ☐ 203(a)(2)(A) Child - F2-2 ☐ 203(a)(2)(B) Unm. S or D - F2-4 ☐ 203(a)(3) Married S or D - F3-1 ☐ 203(a)(4) Brother/Sister - F4-1	Action Stamp	Fee Stamp Petition was filed on: _____ (priority date) ☐ Personal Interview ☐ Previously Forwarded ☐ Pet. ☐ Ben. "A" File Reviewed ☐ I-485 Filed Simultaneously ☐ Field Investigation ☐ 204(g) Resolved ☐ 203(a)(2)(A) Resolved ☐ 203(g) Resolved					
Remarks:							
A. Relationship You are the petitioner. Your relative is the beneficiary.							
1. I am filing this petition for my: ☐ Husband/Wife ☐ Parent ☐ Brother/Sister ☒ Child		2. Are you related by adoption? ☐ Yes ☒ No					
3. Did you gain permanent residence through adoption? ☐ Yes ☒ No							
B. Information about you		C. Information about your relative					
1. Name (Family name in CAPS) (First) (Middle) CARLTON Derek Andrew		1. Name (Family name in CAPS) (First) (Middle) SRISAI Kanya Lawan					
2. Address (Number and Street) (Apt. No.) 575 7th St. (Town or City) (State/Country) (Zip/Postal Code) Champaign IL/USA 61820		2. Address (Number and Street) (Apt. No.) 14 Sri Ayudayha Road (Town or City) (State/Country) (Zip/Postal Code) Bangkok Thailand					
3. Place of Birth (Town or City) (State/Country) Chicago IL/USA		3. Place of Birth (Town or City) (State/Country) Saraburi Thailand					
4. Date of Birth 5. Gender 6. Marital Status 06/18/1974 ☒ Male ☐ Female ☒ Married ☐ Single ☐ Widowed ☐ Divorced		4. Date of Birth 5. Gender 6. Marital Status 02/02/2008 ☐ Male ☒ Female ☐ Married ☐ Single ☐ Widowed ☐ Divorced					
7. Other Names Used (including maiden name)		7. Other Names Used (including maiden name) none					
8. Date and Place of Present Marriage (if married) 04/12/2006		8. Date and Place of Present Marriage (if married) N/A					
9. U.S. Social Security (if any) 10. Alien Registration Number 656-56-5656 None		9. U.S. Social Security (if any) 10. Alien Registration Number None None					
11. Name(s) of Prior Husband(s)/Wife(s) 12. Date(s) Marriage(s) Ended None		11. Name(s) of Prior Husband(s)/Wife(s) 12. Date(s) Marriage(s) Ended None					
13. If you are a U.S. citizen, complete the following: My citizenship was acquired through (check one): ☒ Birth in the U.S. ☐ Naturalization. Give certificate number and date and place of issuance. ☐ Parents. Have you obtained a certificate of citizenship in your own name? ☐ Yes. Give certificate number, date and place of issuance. ☐ No							
14. If you are a lawful permanent resident alien, complete the following: Date and place of admission for or adjustment to lawful permanent residence and class of admission.							
14b. Did you gain permanent resident status through marriage to a U.S. citizen or lawful permanent resident? ☐ Yes ☐ No							
13. Has your relative ever been in the U.S.? ☐ Yes ☒ No							
14. If your relative is currently in the U.S., complete the following: He or she arrived as a: (visitor, student, stowaway, without inspection, etc.) <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Arrival/Departure Record (I-94)</td> <td style="width: 50%;">Date arrived</td> </tr> <tr> <td style="border-bottom: 1px solid black; text-align: center;"> 123456789101112 </td> <td style="border-bottom: 1px solid black;"></td> </tr> </table>				Arrival/Departure Record (I-94)	Date arrived	123456789101112	
Arrival/Departure Record (I-94)	Date arrived						
123456789101112							
Date authorized stay expired, or will expire, as shown on Form I-94 or I-95							
15. Name and address of present employer (if any) None							
Date this employment began							
16. Has your relative ever been under immigration proceedings? ☒ No ☐ Yes Where _____ When _____ ☐ Removal ☐ Exclusion/Deportation ☐ Rescission ☐ Judicial Proceedings							
INITIAL RECEIPT _____ RESUBMITTED _____ RELOCATED: Rec'd _____ Sent _____ COMPLETED: Appv'd _____ Denied _____ Ret'd _____							

Sample Form I-130 (page 2)

C. Information about your alien relative (continued)**17. List husband/wife and all children of your relative.**

(Name) (Relationship) (Date of Birth) (Country of Birth)

None

18. Address in the United States where your relative intends to live.

(Street Address) (Town or City) (State)

575 7th St.

Champaign

Illinois

19. Your relative's address abroad. (Include street, city, province and country)

Phone Number (if any)

14 Sri Ayudayha Road, Bangkok, Thailand

None

20. If your relative's native alphabet is other than Roman letters, write his or her name and foreign address in the native alphabet.

(Name) Address (Include street, city, province and country):

21. If filing for your husband/wife, give last address at which you lived together. (Include street, city, province, if any, and country):

From: To:

22. Complete the information below if your relative is in the United States and will apply for adjustment of status.

Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the USCIS office in:

If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American consular post in:

(City)

(State)

(City)

(Country)

NOTE: Designation of an American embassy or consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that post. Acceptance is at the discretion of the designated embassy or consulate.**D. Other information****1. If separate petitions are also being submitted for other relatives, give names of each and relationship.**

Chosita Chanakarn SRISAI, wife

2. Have you ever before filed a petition for this or any other alien? ☐ Yes ☒ No

If "Yes," give name, place and date of filing and result.

WARNING: USCIS investigates claimed relationships and verifies the validity of documents. USCIS seeks criminal prosecutions when family relationships are falsified to obtain visas.**PENALTIES:** By law, you may be imprisoned for not more than five years or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws. In addition, you may be fined up to \$10,000 and imprisoned for up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.**YOUR CERTIFICATION:** I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.**E. Signature of petitioner.***Derek A. Carlton*

Date 8/19/2008

Phone Number (217) 555-1313

F. Signature of person preparing this form, if other than the petitioner.

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name Signature Date

Address G-28 ID or VOLAG Number, if any.

Application for Certificate of Citizenship, Sample Form N-600 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0057; Expires 10/31/05
You may continue to use this form after expiration date.

N-600, Application for Certificate of Citizenship

Print clearly or type your answers, using CAPITAL letters in black ink. Failure to print clearly may delay processing of your application.

Part I. Information About You. (Provide information about yourself, if you are a person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your minor child, **provide information about your child**).

A. Current legal name

Family Name (Last Name)

REYNOLDS

Given Name (First Name)

Besa

Full Middle Name (If applicable)

Najada

B. Name exactly as it appears on your Permanent Resident Card (If applicable).

Family Name (Last Name)

REYNOLDS

Given Name (First Name)

Besa

Full Middle Name (If applicable)

Najada

C. Other names used since birth

Family Name (Last Name)

Given Name (First Name)

Middle Name (If applicable)

D. U.S. Social Security # (If applicable)

None

E. Date of Birth (mm/dd/yyyy)

03/09/1999

F. Country of Birth

Albania

G. Country of Prior Nationality

Albania

H. Gender

☐ Male ☒ Female

I. Height

4'1"

Part 2. Information About Your Eligibility. (Check only one).

A. I am claiming U.S. citizenship through:

- ☐ A U.S. citizen father or a U.S. citizen mother.
☐ Both U.S. citizen parents.
☐ A U.S. citizen adoptive parent(s).
☐ An alien parent(s) who naturalized.

B. ☒ I am a U.S. citizen parent applying for a certificate of citizenship on behalf of my minor (under 18 years) BIOLOGICAL child.

C. ☐ I am a U.S. citizen parent applying for a certificate of citizenship on behalf of my minor (less than 18 years) ADOPTED child.

D. ☐ Other (Please explain fully)

If your child has an "A" Number, write it here:

A

For USCIS Use Only

Returned	Receipt
Date	
Date	
Resubmitted	
Date	
Date	
Reloc Sent	
Date	
Date	
Reloc Rec'd	
Date	
Date	

Remarks

Action Block

To Be Completed by

☐ Attorney or Representative, if any.

Fill in box if G-28 is attached to represent the applicant.

ATTY State License #

Sample Form N-600 (page 2)

Part 3. Additional Information About You. (Provide additional information about **yourself**, if you are the person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your **minor child**, provide the additional information about your **minor child**).

A. Home Address - Street Number and Name (Do not write a P.O. Box in this space)

Apartment Number

122 Dyrrah Way				
City	County	State/Province	Country	Zip/Postal Code
Durres			Albania	

B. Mailing Address - Street Number and Name (If different from home address)

Apartment Number

City	County	State/Province	Country	Zip/Postal Code

C. Daytime Phone Number (If any)

Evening Phone Number (If any)

E-Mail Address (If any)

(355) 04 223322	(355) 04 112233	besa37@durres.com
-------------------	-------------------	-------------------

D. Marital Status
☒ Single, Never Married
 ☐ Married
 ☐ Divorced
 ☐ Widowed

☐ Marriage Annulled or Other (Explain)

--

E. Information about entry into the United States and current immigration status**1.** I arrived in the following manner:

Port of Entry (City/State)

Date of Entry (mm/dd/yyyy)

Exact Name Used at Time of Entry:

Buffalo, NY	04/02/2007	Besa Najada REYNOLDS
-------------	------------	----------------------

2. I used the following travel document to enter:
☒ Passport

☐ Passport Number

Country Issuing Passport

Date Passport Issued (mm/dd/yyyy)

1234567	Albania	06/07/2006
---------	---------	------------

Other (Please Specify Name of Document and Dates of Issuance)

--

3. I entered as:
☐ An immigrant (lawful permanent resident) using an immigrant visa

☒ A nonimmigrant

☐ A refugee

☐ Other (Explain)
4. I obtained lawful permanent resident status through adjustment of status (If applicable):

Date you became a Permanent Resident (mm/dd/yyyy)

USCIS (or former INS) Office where granted adjustment of status

--	--

F. Have you previously applied for a certificate of citizenship or U.S. passport?
☒ No

☐ Yes (Attach Explanation)

Sample Form N-600 (page 3)

Part 3. Additional Information About You. (Provide additional information about **yourself**, if you are the person applying for the Certificate of Citizenship. If you are a U.S. citizen parent applying for a Certificate of Citizenship for your **minor child**, provide the additional information about your **minor child**). **Continued.**

G. Were you adopted? ☒ No ☐ Yes (Please complete the following information):

Date of Adoption (mm/dd/yyyy)

Place of Final Adoption (City/State or Country)

Date Legal Custody Began (mm/dd/yyyy)

Date Physical Custody Began (mm/dd/yyyy)

H. Did you have to be re-adopted in the United States? ☐ No ☐ Yes (Please complete the following information):

Date of Final Adoption (mm/dd/yyyy)

Place of Final Adoption (City/State)

Date Legal Custody Began (mm/dd/yyyy)

Date Physical Custody Began (mm/dd/yyyy)

I. Were your parents married to each other when you were born (or adopted)? ☐ No ☐ Yes

J. Have you been absent from the United States since you first arrived? (Only for persons born before October 10, 1952, who are claiming U.S. citizenship at time of birth; otherwise, do not complete this section.) ☐ No ☐ Yes

If yes, complete the following information about all absences, beginning with your most recent trip. If you need more space, use a separate sheet of paper.

Date You Left the United States (mm/dd/yyyy)	Date You Returned to the United States (mm/dd/yyyy)	Place of Entry Upon Return to the United States

Part 4. Information About U.S. Citizen Father (or Adoptive Father). (Complete this section if you are claiming citizenship through a U.S. citizen father. If you are a U.S. citizen father applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about **yourself** below.)

A. Current legal name of U.S. citizen father.

Family Name (Last Name)

Given Name (First Name)

Full Middle Name (If applicable)

B. Date of Birth (mm/dd/yyyy)

C. Country of Birth

D. Country of Nationality

E. Home Address - Street Number and Name (If deceased, so state and enter date of death)

Apartment Number

City

County

State/Province

Country

Zip/Postal Code

Sample Form N-600 (page 4)

Part 4. Information About U.S. Citizen Father (or Adoptive Father). (Complete this section if you are claiming citizenship through a U.S. citizen father. If you are a U.S. citizen father applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about **yourself** below.) **Continued.**

F. U.S. citizen by:

- ☒ Birth in the United States
☐ Birth abroad to U.S. citizen parent(s)
☐ Acquisition after birth through naturalization of alien parent(s)
☐ Naturalization

Date of Naturalization (mm/dd/yyyy)

Place of Naturalization (Name of Court and City/State or USCIS or Former INS Office Location)

Certificate of Naturalization Number

Former "A" Number (If known)

G. Has your father ever lost U.S. citizenship or taken any action that would cause loss of U.S. citizenship?

- ☒ No ☐ Yes (Provide full explanation on a separate sheet(s) of paper.)

H. Dates of Residence and/or Physical Presence in the United States (Complete this only if you are an applicant claiming U.S. citizenship at time of birth abroad)

Provide the dates your U.S. citizen father resided in or was physically present in the United States. If you need more space, use a separate sheet(s) of paper.

From (mm/dd/yyyy)	To (mm/dd/yyyy)
07/10/1973	11/01/1997

I. Marital History

1. How many times has your U.S. citizen father been married (including annulled marriages)?

2. Information about U.S. citizen father's **current spouse**:

Family Name (Last Name)

Given Name (First Name)

Full Middle Name (If applicable)

Date of Birth (mm/dd/yyyy)

Country of Birth

Country of Nationality

Home Address - Street Number and Name

Apartment Number

City

County

State or Province

Country

Zip/Postal Code

Date of Marriage (mm/dd/yyyy)

Place of Marriage (City/State or Country)

Spouse's Immigration Status:

☐ U.S. Citizen☐ Lawful Permanent Resident☒ Other (Explain)

3. Is your U.S. citizen father's current spouse also your mother?

☐ No☒ Yes

Sample Form N-600 (page 5)

Part 5. Information About Your U.S. Citizen Mother (or Adoptive Mother). *(Complete this section if you are claiming citizenship through a U.S. citizen mother (or adoptive mother). If you are a U.S. citizen mother applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about **yourself** below).*

A. Current legal name of U.S. citizen mother.Family Name *(Last Name)*Given Name *(First Name)*Full Middle Name *(If applicable)***B. Date of Birth** *(mm/dd/yyyy)***C. Country of Birth****D. Country of Nationality****E. Home Address - Street Number and Name** *(If deceased, so state and enter date of death)*

Apartment Number

City

County

State/Province

Country

Zip/Postal Code

F. U.S. citizen by:☐ Birth in the United States☐ Birth abroad to U.S. citizen parent(s)☐ Acquisition after birth through naturalization of alien parent(s)☐ NaturalizationDate of Naturalization *(mm/dd/yyyy)*Place of Naturalization *(Name of Court and City/State or USCIS or Former INS Office Location)*

Certificate of Naturalization Number

Former "A" Number *(If known)***G. Has your mother ever lost U.S. citizenship or taken any action that would cause loss of U.S. citizenship?**☐ No☐ Yes *(Provide full explanation on a separate sheet(s) of paper.)***H. Dates of Residence and/or Physical Presence in the United States** *(Complete this only if you are an applicant claiming U.S. citizenship at time of birth abroad)*

Provide the dates your U.S. citizen father resided in or was physically present in the United States. If you need more space, use a separate sheet(s) of paper.

From <i>(mm/dd/yyyy)</i>	To <i>(mm/dd/yyyy)</i>

I. Marital History

1. How many times has your U.S. citizen mother been married (including annulled marriages)?

2. Information about U.S. citizen mother's **current spouse**:Family Name *(Last Name)*Given Name *(First Name)*Full Middle Name *(If applicable)*Date of Birth *(mm/dd/yyyy)*

Country of Birth

Country of Nationality

Sample Form N-600 (page 6)

Part 5. Information About Your U.S. Citizen Mother (or Adoptive Mother). (Complete this section if you are claiming citizenship through a U.S. citizen mother (or adoptive mother). If you are a U.S. citizen mother applying for a Certificate of Citizenship on behalf of your minor biological or adopted child, provide information about **yourself** below). **Continued.**

2. Information about U.S. citizen mother's current spouse: (Continued.)

Home Address - Street Number and Name

Apartment Number

--	--	--	--	--

City

County

State or Province

Country

Zip/Postal Code

--	--	--	--	--

Date of Marriage (mm/dd/yyyy)

Place of Marriage (City/State or Country)

--	--

Spouse's Immigration Status:

☐ U.S. Citizen

☐ Lawful Permanent Resident

☐ Other (Explain)

--

3. Is your U.S. citizen mother's current spouse also your father?

☐ No

☐ Yes

Part 6. Information About Military Service of U. S. Citizen Parent(s). (Complete this only if you are an applicant claiming U.S. citizenship at time of birth abroad)

1. Has your U. S. citizen parent(s) served in the armed forces?

☐ No

☐ Yes

2. If "Yes," which parent?

☐ U.S. Citizen Father

☐ U.S. Citizen Mother

3. Dates of Service. (If time of service fulfills any of required physical presence, submit evidence of service.)

From (mm/dd/yyyy)

To (mm/dd/yyyy)

From (mm/dd/yyyy)

To (mm/dd/yyyy)

--	--	--	--

4. Type of discharge.

☐ Honorable

☐ Other than Honorable

☐ Dishonorable

Part 7. Signature.

I certify, under penalty of perjury under the laws of the United States, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records, or my minor child's records, that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Applicant's Signature

Printed Name

Date (mm/dd/yyyy)

Joseph Reynolds

Joseph Reynolds

04/06/2008

Part 8. Signature of Person Preparing This Form, If Other Than Applicant.

I declare that I prepared this application at the request of the above person. The answers provided are based on information of which I have personal knowledge and/or were provided to me by the above-named person in response to the questions contained on this form.

Preparer's Signature

Preparer's Printed Name

Date (mm/dd/yyyy)

Name of Business/Organization (If applicable)

Preparer's Daytime Phone Number

()

Preparer's Address - Street Number and Name

City

County

State

Zip Code

Sample Form N-600 (page 7)

NOTE: Do not complete the following parts unless a USCIS officer instructs you to do so at the interview.

Part 9. Affidavit.

I, the (applicant, parent or legal guardian) _____ do swear or affirm, under penalty of perjury laws of the United States, that I know and understand the contents of this application signed by me, and the attached supplementary pages number (____) to (____) inclusive, that the same are true and correct to the best of my knowledge, and that corrections number (____) to (____) were made by me or at my request.

Signature of parent, guardian or applicant

Date (mm/dd/yyyy)

Subscribed and sworn or affirmed before me upon examination of the applicant (parent, guardian) on _____ at _____.

Signature of Interviewing Officer

Title

Part 10. Officer Report and Recommendation on Application for Certificate of Citizenship.

On the basis of the documents, records and the testimony of persons examined, and the identification upon personal appearance of the underage beneficiary, I find that all the facts and conclusions set forth under oath in this application are ☐ true and correct; that the applicant did ☐ derive or acquire U.S. citizenship on _____ (mm/dd/yyyy), through (mark "X" in appropriate section of law or, if section of law not reflected, insert applicable section of law in "Other" block): ☐ section 301 of the INA ☐ section 309 of the INA ☐ section 320 of the INA ☐ section 321 of the INA ☐ Other _____ and that (s)he ☐ has ☐ has not been expatriated since that time. I recommend that this application be ☐ granted ☐ denied and that ☐ A or ☐ AA Certificate of Citizenship be issued in the name of _____.

District Adjudication Officer's Name and Title

District Adjudication Officer's Signature

I do ☐ do not ☐ concur in recommendation of the application.

District Director or Officer-in-Charge Signature

Date (mm/dd/yyyy)

Orphan Immigrants

A. Who Qualifies as an Orphan Child.....	132
B. Who Can Petition for an Orphan Child.....	133
C. Pre-Adoption Requirements.....	133
D. Starting the Adoption Process.....	135
1. When the Child Is Not Yet Identified	135
2. When the Child Is Identified.....	136
E. After the Petition Is Approved.....	137
F. Filing for a Visa.....	137
G. Automatic Citizenship for Adopted Orphans.....	137

If you've read the chapter on adopted children, you realize that the immigration rules around adoption are difficult, requiring not only legal custody, but two years of living together before the parent can petition for the child. Adopting an orphan is easier, in that these requirements are dropped. In fact, many of the U.S. citizens you know who've adopted from overseas probably adopted orphans.

There are two types of orphan immigrant visas:

- an IR-3 visa classification, for orphans who have met the parents and whose adoptions were completed abroad, and
- an IR-4 classification, for orphans who, although in the legal custody of the U.S. citizen parent or parents, still need to be legally adopted after reaching the United States, or who need to be readopted because the U.S. parents haven't yet seen the child.

In either case, the application process includes a number of complexities.

Because of these complexities, most Americans who adopt from overseas use an agency that specializes in international adoptions, although direct adoption is also possible. Even with an agency, expect the process to take at least six to twelve months. Although we can't provide you with a list of reputable agencies, two California-based groups that Nolo lawyers have had good experiences with are Adopt International, at 415-934-0700, www.adopt-inter.org; and Adoption Connection, at 800-972-9225, 415-359-2494, www.adoptionconnection.org.

Be selective in choosing an adoption agency—look for one that has been doing adoptions for a number of years, successfully completes a comparatively large number per year, serves the countries in which you're interested, and is happy to show you evidence that it's licensed and comes with good references.



CAUTION

If the U.S. petitioner has a criminal record, see an attorney. Under the Adam Walsh Child Protection and Safety Act of 2006, U.S. citizens and lawful permanent residents who have been convicted of any "specified offense against a minor" are prohibited from filing a family-based immigrant petition on behalf of any beneficiary (whether a child or not). USCIS will run security checks on all petitions and may call the petitioner in for fingerprinting. If the petitioner has a conviction for one of the specified offenses against a minor, then the petition will not be approved unless USCIS determines that the U.S. petitioner poses no risk to the beneficiary.



CAUTION

You'll also need to follow the rules of the country you're adopting from. Not every country allows international adoptions, and those that do usually impose various requirements on the parents. For example, some countries refuse to allow single-parent adoptions, or require that adopting parents be of a certain age. This chapter covers only the U.S. requirements; you'll need to research the international requirements on your own, or with the help of your adoption agency.

A. Who Qualifies as an Orphan Child

A child under 16 years of age (or under 18, if he or she is being adopted along with a brother or sister under 16) is considered an orphan if the child meets any of the following conditions:

- both parents have died or have disappeared
- the sole or surviving parent is incapable of providing the proper child care and has, in writing, released the child for adoption and emigration, or
- both father and mother have abandoned the child, or have become separated or lost from the child—and the legal authorities in

the child's country, recognizing the child as abandoned, have granted legal custody of the child to an orphanage.

However, if the child has been placed with other people, or temporarily in the orphanage, or if one or both parents continue to maintain contact—for example, sending gifts, writing letters, or showing that they have not ended their parental obligations to the child—the child will not be considered an orphan by the U.S. government. You also can't get around the requirements by having the overseas parent or parents “abandon” the child into the hands of the adopting U.S. couple or person.

B. Who Can Petition for an Orphan Child

Only U.S. citizens are allowed to file a visa petition for an orphan child; lawful permanent residents may not do so. A number of other regulations also apply.

- If a married couple is adopting, only one of them need be a U.S. citizen (but both have to be age 21 or over and sign the petition).
- If the U.S. citizen is not married, then he or she must be at least 25 years of age before filing the petition. In addition, if the citizen was under 25 when the foreign adoption took place, the adoption will be considered invalid, and the citizen will have to readopt the child after the child reaches the United States (if allowed in his or her state of residence).
- The orphan child must be less than 16 years of age when the petition is filed (or under 18, if the parents are also petitioning for the child's brother or sister who is under 16).
- The adopting married couple, or single person, must have completed certain pre-adoption requirements, such as a home study, before filing the petition. (See Section C, below.)

- The adopting married couple, or single person, must have seen the child in the orphan's country before or during the adoption proceedings, or show that they'll be able to “readopt” the child in the United States.



CAUTION

Beware of the lawbreakers. In some developing countries, kidnapping poor children and then selling them for adoption to childless couples in the United States and Europe has become scandalously rampant.

Your search for a child of your own should not cause the kidnapping or sale of another person's child. Before you sign up with any adoption organization, check its references with friends who have worked with the organization—or ask for the names of some former clients, and then call them. Above all, avoid direct arrangements with the surviving parent or private individuals acting as brokers for a fee.

C. Pre-Adoption Requirements

To protect the child and to ensure that the adopting parent or parents will care for the child properly, the immigration laws require what's called a “home study” before an adoption decree is finalized or before a petition for an orphan child will be approved. Many couples take care of this first, as part of an advance processing application, described below in Section D1.

The purpose of the home study is to allow the state agency handling adoptions to investigate the future home of the child (and any adult living in it) and verify whether the adopting couple, or the single person, is psychologically and economically fit to adopt a child. Most home studies take about three months.

The home study must result in a favorable report recommending the proposed adoption. The report must be signed by an official of a state agency, or an agency licensed by the state in which the child

will live with the adopting parent or parents. It's good for only six months.

This report must contain the following information:

- the financial ability of the parent or parents to raise and educate the child
- a discussion of possible negative factors, such as a history of substance abuse, child abuse, sexual abuse, domestic violence, criminal behavior, or past denials of adoptions or unfavorable home study reports
- a detailed description of the living accommodations, including special accommodations for a child with disabilities or medical issues, and
- a factual evaluation of the physical, mental, and moral ability of the adopting parent or parents, including observations made during personal interviews.

In addition to the home study, other pre-adoption conditions may be required by some states before an adoption petition may be filed with local courts. Therefore, if you are planning to adopt the orphan child in the United States, you must first comply with these state rules.

In every state, there is one main agency that oversees adoptions. To contact the local representative of your state agency, check your state government website or look in the telephone book under Adoption, Child Welfare, or Social Services.

International Adoption for Lesbians and Gays

Currently, no foreign country allows adoption by same-sex couples or by any openly gay person. Most countries strongly prefer that the adopting parents be married. If a country requires adoptive parents to be married, then neither a same-sex couple nor a lesbian or gay individual can adopt there. It's doubtful that the ability to marry in Massachusetts will have any impact on the host country's policy.

At least one country (China) is so determined not to grant adoptions to lesbians and gays that it requires adoptive parents to sign an affidavit swearing that they are heterosexual. Apparently undeterred, a large number of same-sex couples have successfully adopted Chinese girls who were being raised in orphanages.

If you are proceeding with a foreign adoption, you may opt to keep your sexual orientation—and your relationship with your partner—hidden from the host country. It is a judgment call whether or not you tell the agency helping you with the adoption. Many agencies operate on a wink-and-nod basis—they are fully aware of the nature of your relationship with your partner, but refer to the partner as a “roommate” in their reports to the host country, and simply ignore the issue of sexual orientation.

No agency will advertise that it works with same-sex couples or lesbian/gay individuals on international adoptions, so word of mouth is the best way to find an agency to help you.

For more about adoption and parenting for same-sex couples, check out [A Legal Guide for Lesbian & Gay Couples](#), by Hayden Curry, Denis Clifford, and Frederick Hertz (Nolo).

D. Starting the Adoption Process

The first steps toward adoption depend in part on whether or not the orphan child has been identified (chosen).



CAUTION

These procedures may change. The U.S. citizens recently implemented the Hague Convention on the Protection of Children (HCIA). Compliance may require changes to some of the immigration procedures described in this book. Check the USCIS instructions at www.uscis.gov, and the updates on Nolo's website, www.nolo.com. Also see the State Department's website for procedural summaries, specific country policies, and warnings about problems in different countries (go to <http://travel.state.gov>; and under "Children & Family," click "Intercountry Adoption."

1. When the Child Is Not Yet Identified

If a particular child has not yet been singled out and the parents are going abroad to locate an orphan child for adoption, or for adoption after arrival in the United States, they should file an advance processing application, as follows:

- ☐ Fees of \$80 each for fingerprints of the U.S. citizen and, if married, of the spouse. You can pay by check or money order, made out to the U.S. Department of Homeland Security. Also, all adults aged 18 years or older who live in the household must be fingerprinted. (See Chapter 22, Section F.)
 - ☐ Evidence of petitioner's age, if unmarried.
 - ☐ A favorable home study report. If the home study report is not yet available, it must be submitted within one year from the date of filing the advance application. Otherwise, the application will be considered to have been abandoned.
 - ☐ Proof of compliance with any pre-adoption requirements of the state in which the child will live if the adoption is to be completed in the United States (see Section C).
 - ☐ A filing fee (currently \$670).
- After the advance processing application has been approved by USCIS, you have 18 months in which to locate an orphan child and continue with the application process. If you're not having any luck finding an orphan child within one year, you can ask USCIS for a one-time extension. Do so within the 90 days before the USCIS approval notice expires—don't wait until it has already expired. You must make the request in writing, to the same office that approved your Form I-600A. With your letter, you must include an updated or amended home study report. You'll probably also need to request a one-time re-fingerprinting (without charge), since the original fingerprints are valid for only 15 months.
- If you miss the deadline to ask for an extension, or you still can't find a child even after an extension, you basically need to start over. That means you'll to submit a new advance processing application (with a new filing fee) if the child has not yet been identified, or a petition as described below (which also requires the filing fee of \$670) if the child has been identified.
- ☐ Form I-600A, Application for Advance Processing of Orphan Petition, signed by the U.S. citizen and, if married, the spouse. (See sample at end of this chapter.)
 - ☐ Proof of petitioner's U.S. citizenship. (See Chapter 22.)
 - ☐ If married, evidence of the spouse's U.S. citizenship or lawful legal status in the United States.
 - ☐ Marriage certificate, divorce or annulment decree, or death certificate, as evidence of present and previous marital status.

Can You Bring the Child to the U.S. First?

It's frustrating for parents eager to bring an orphan child into their home to have to wait for all the immigration procedures to be completed. In light of this, the U.S. government tries to give high priority to orphan petitions. However, the government doesn't smile upon efforts by parents to get around the U.S. immigration laws, for example by bringing the child in on a tourist or student visa, and attempting to complete the adoption and immigration processes afterward. Basically, this won't work. In rare cases, however, USCIS will grant humanitarian parole to allow an orphan into the U.S. even before the immigration procedures have been finished—most often because of a medical or similar emergency. You're best off consulting an experienced immigration attorney for help in requesting humanitarian parole.

When you look at the sample I-600A, you'll notice that it assumes you've already figured out which country you plan to adopt a child from, and asks questions about your travel plans. But what if you end up being unable to find a child in that country? If you're still within the 18-month approval period, you can request a one-time change of country, at no extra charge. To do so, you'll need to send a letter to the same USCIS office that approved the I-600A petition. However, if you later want to change the country of adoption a second time, you'll need to file USCIS Form I-824, Application for Action on an Approved Application or Petition, along with a filing fee (currently \$340). The reason for all this paperwork is that by now, USCIS will have notified the U.S. consulate in the country you originally planned to adopt from, and now needs to notify a different consulate instead (you'll specify which one in Part 2 of Form I-824).

2. When the Child Is Identified

When the adopting parent or parents have identified the orphan child they wish to adopt, they can immediately file a petition for the child at the appropriate USCIS Service Center. (See the USCIS website at www.uscis.gov for the exact address and P.O. box.) Or, if the U.S. citizen will be overseas to adopt or locate the orphan, you can file the petition with the U.S. consulate in the country of the child's residence.

This can be done even if the advance processing application has not yet been approved or has not yet been filed. If the advance processing application has been filed but not approved, include a copy of the filing receipt with the petition. If it has already been approved, include a copy of the approval notice.

You must file all the documents listed in Section D1 above (except Form I-600A), as well as:

- ☐ Form I-600, Petition to Classify Orphan as an Immediate Relative
- ☐ the birth certificate of the orphan child, who must be under 16 years of age when the petition is filed
- ☐ death certificates of the parents of the child or proof of legal abandonment by both the father and mother, and
- ☐ the adoption decree or evidence that you have legal custody of the orphan and are working toward adoption, and
- ☐ filing fee (currently \$670) unless you're filing based on an approved I-600A filed within the previous 18 months, in which case you don't need to pay the fee.

E. After the Petition Is Approved

If the petition is filed and approved by USCIS in the United States, the entire file is sent to the U.S. consulate in the country in which the child lives.

The consular officer then investigates the child. This may take either a few days or several months. The investigation aims to confirm that the child:

- meets the legal definition of an orphan, and
- does not have an illness or disability that was not described in the orphan petition.

A long delay in the adoption process of an orphan child can cause would-be parents much anxiety. However, keep in mind that the investigation is performed as a service to protect adopting parents from the heartbreaking situation that could develop if the child later proved not to be available for adoption.

F. Filing for a Visa

When the petition is approved, the case will be transferred to the U.S. consulate in the orphan child's country of residence, for immigrant visa processing. (See Chapter 19 for advice and instructions on consular processing.)

In addition to the documents ordinarily required for consular processing, you'll need to bring the child's final adoption decree or proof of custody from the foreign government.

After receiving an immigrant visa, the orphan child can then enter the United States as a permanent resident. If the child has not yet been adopted in the foreign country, the U.S. citizen or couple can proceed to adopt the child according to the laws of the state in which they live.

Meeting Face-to-Face

The American individual or couple who wish to adopt need not have seen the child personally before filing the visa petition if the adoption is to be done in the United States. However, if you are going to adopt a child to raise as your own for the rest of your life, you will likely want to find out what the child looks like, how you react to each other, what the child's physical condition is, and other imperceptible factors that only a face-to-face encounter can provide. Most people prefer to visit the child abroad before beginning adoption proceedings.

G. Automatic Citizenship for Adopted Orphans

Under the Child Citizenship Act of 2000, orphans who enter on IR-3 visas (meaning the adoption is legally complete before they enter the U.S.) become citizens as soon as they enter the United States, and should receive a citizenship certificate by mail from USCIS within about six weeks.

Orphans who enter the U.S. on IR-4 visas will become U.S. citizens as soon as their adoptions are complete. To obtain proof of their citizenship, the parents will need to apply to their local USCIS office, using Form N-643K.

Application for Advance Processing of Orphan Petition, Sample Form I-600A (page 1)

OMB No. 1615-0028; Expires 08/31/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-600A, Application for Advance Processing of Orphan Petition

Do not write in this block.**For USCIS Use Only.**

It has been determined that the: ☐ Married ☐ Unmarried prospective adoptive parent will furnish proper care to a beneficiary orphan if admitted to the United States. There: ☐ are ☐ are not preadoptive requirements in the State of the child's proposed residence. The following is a description of the preadoption requirements, if any, of the State of the child's proposed residence: The preadoption requirements, if any,: ☐ have been met. ☐ have not been met.	Fee Stamp DATE OF FAVORABLE DETERMINATION DD DISTRICT File number of applicant, if applicable.
---	--

Please type or print legibly in black ink.*This application is made by the named prospective adoptive parent for advance processing of an orphan petition.***BLOCK I - Information about the prospective adoptive parent.**

1. My name is: (Last) (First) (Middle)

LERNER
Cora
Lynn
2. Other names used (including maiden name if appropriate):

ADAMS, Cora Lynn
3. I reside in the U.S. at: (C/O if appropriate) (Apt. No.)

(Number and Street)	(Town or City)	(State)	(Zip Code)
444 5th Street	Fremont	CA	94536
4. Address abroad (If any): (Number and Street) (Apt. No.)

(Town or City)	(Province)	(Country)
----------------	------------	-----------
5. I was born on: (mm/dd/yyyy)

09/16/1974

In: (Town or City)	(State or Province)	(Country)
Fort Bragg	CA	USA
6. My telephone number is: (Include Area Code)

510-555-1212
7. My marital status is:
☒ Married
☐ Widowed
☐ Divorced
☐ Single

☐ I have never been married.
☐ I have been previously married _____ time(s).

8. If you are now married, give the following information:

- | |
|--|
| Date and place of present marriage (mm/dd/yyyy) |
| 10/04/2003, Fremont, CA |
| Name of present spouse (include maiden name of wife) |
| LERNER, Kenneth Jon |
| Date of birth of spouse (mm/dd/yyyy) |
| 07/08/1973 |
| Place of birth of spouse |
| Buffalo, NY |
| Number of prior marriages of spouse |
| None |
| My spouse resides ☒ With me ☐ Apart from me (provide address below) |
| (Apt. No.) (No. and Street) (City) (State) (Country) |
-
9. I am a citizen of the United States through:
☒ Birth ☐ Parents ☐ Naturalization
 - If acquired through naturalization, give name under which naturalized, number of naturalization certificate, and date and place of naturalization.
 - _____
 If not, submit evidence of citizenship. See Instruction 2.a(2).
 - If acquired through parentage, have you obtained a certificate in your own name based on that acquisition?
☐ No ☐ Yes
 - Have you or any person through whom you claimed citizenship ever lost United States citizenship?
☒ No ☐ Yes (If Yes, attach detailed explanation.)

Received	Trans. In	Ret'd Trans. Out	Completed

Sample Form I-600A (page 2)

BLOCK II - General information.

10. Name and address of organization or individual assisting you in locating or identifying an orphan (Name)

Adopt International
(Address)

3705 Haven Avenue, Menlo Park, CA

11. Do you plan to travel abroad to locate or adopt a child?

☒ Yes ☐ No

12. Does your spouse, if any, plan to travel abroad to locate or adopt a child?

☒ Yes ☐ No

13. If the answer to Question 11 or 12 is "Yes," give the following information:

a. Your date of intended departure February 10, 2009

b. Your spouse's date of intended departure February 10, 2009

c. City, province Datong, Shanxi

14. Will the child come to the United States for adoption after compliance with the preadoption requirements, if any, of the State of proposed residence?

☐ Yes ☒ No

15. If the answer to Question 14 is "No," will the child be adopted abroad after having been personally seen and observed by you and your spouse, if married?

☒ Yes ☐ No

16. Where do you wish to file your orphan petition?

The USCIS office located at

The American Embassy or Consulate at
Beijing, China

17. Do you plan to adopt more than one child?

☐ Yes ☒ No

If "Yes," how many children do you plan to adopt?

Certification of prospective adoptive parent.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct and that I will care for an orphan/orphans properly if admitted to the United States.

Cora Lynn Lerner

(Signature of Prospective Adoptive Parent)

July 15, 2008

Executed on (Date)

Certification of married prospective adoptive parent spouse.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct and that my spouse and I will care for an orphan/orphans properly if admitted to the United States.

Kenneth Jon Lerner

(Signature of Prospective Adoptive Parent Spouse)

July 15, 2008

Executed on (Date)

Signature of person preparing form, if other than petitioner.

I declare that this document was prepared by me at the request of the petitioner and is based entirely on information of which I have knowledge.

(Signature)

Street Address and Room or Suite No./City/State/Zip Code

Executed on (Date)

The Diversity Visa Lottery

A. Who Qualifies for the Lottery.....	143
1. What Country—Or Countries—You’re a Native Of.....	143
2. The Educational Requirements.....	143
B. How to Apply for the Lottery.....	144
1. The Application	144
2. Notification of Winners	145
C. After You Win—The Green Card Application.....	145
D. How to Bring Your Spouse and Children	146

In 1990, Congress created a new green card category to help balance out the numbers of immigrants coming from different countries, by opening up green card opportunities for people from countries that don't send many immigrants to the United States. Although the official name for this category is the “diversity visa,” most people know it as the “visa lottery,” because winners—50,000 in total—are selected through a random drawing. (The drawing is done by a computer.)

The visa lottery is held once a year. Every year the U.S. government looks to see which countries have sent the fewest immigrants to the United States in the last five years, and accordingly adds to or subtracts from the list of countries whose natives are allowed to put their names into the drawing. Each qualifying country is limited to 3,850 lottery green cards per year.

You can enter the lottery if you are a native of one of the listed countries and meet certain other requirements. One of the latest requirements is purely technological—all applicants must now submit their applications through the Internet and attach a digital photo.

If you win the lottery, you've won the right to apply for green cards for yourself, your spouse, and your unmarried children under age 21—but no more than the right to apply. You can still be refused a green card for many reasons, including because of delays by the U.S. government causing you to miss the deadline, or because you've failed to meet the educational, health, or financial criteria for the diversity visa and green card.

Certain risks come with applying for the lottery. For example, if you win the lottery but are ultimately refused a green card, you've announced to the U.S. government that you're hoping to get a green card. That can make it very difficult to obtain or extend short-term visas to the United States—such as student or visitor visas. (Most short-term visas require you to assure the U.S. government that you have every intention of returning home

afterward.) Even entering the lottery and losing is something you must declare on any later applications for U.S. visas, and it may be taken into account in considering whether you'll really return home on time.



CAUTION

The lottery changes every year. It is an annual event, with a slightly different set of rules, including qualifying countries, every year. Although this chapter will give you the basics, you'll need to double check with the U.S. State Department during the year in which you'll be applying. The rules are usually announced around September, and posted on the State Department's website at www.state.gov.

Details of the Lottery That Began in 2007

At the time this book went to print, the most recent lottery had begun in 2007 (which the government calls “DV-2009”). Applications were accepted between noon on October 3, 2007 and noon on December 2, 2007. Winners were to be notified between May and July 2008. Natives of the following countries were not eligible (meaning that people who were natives of any other country in the world were allowed to enter):

Brazil	Mexico
Canada	Pakistan
China (mainland, not including Macau, Taiwan, or Hong Kong)	Peru
	Philippines
	Poland
Colombia	Russia
Dominican Republic	South Korea
Ecuador	United Kingdom
El Salvador	(except Northern Ireland) and its dependent territories
Guatemala	
Haiti	
India	Vietnam
Jamaica	

A. Who Qualifies for the Lottery

Whether or not you're allowed to enter the lottery depends on whether:

- you are a native of one of the countries that is eligible that year, and
- you meet the educational requirements.

It doesn't matter if you've already got an application for a green card underway in another category, for example through a family member or employer—you can still enter the diversity visa lottery.

1. What Country—or Countries—You're a Native Of

Lottery applicants should make sure that they can actually claim what the law describes as “nativity” in an eligible country. Nativity is usually based on having been born in the country. Living in a country is not enough, even if you have residence rights there.

You may, however, be a native of more than one country. This can be helpful for lottery purposes if you were born in one of the ineligible countries, or if your native country has a lot of people applying for the lottery from it. There are two ways to gain nativity in a country other than having been born there:

- If your spouse was born in an eligible country, you can claim your spouse's country of birth for lottery purposes.
- If neither of your parents was born in your birth country or made a home there at the time of your birth, you may be able to claim nativity in one of your parents' countries of birth.

And remember, the list of eligible countries changes slightly every year, so check the State Department's instructions before you apply.



CAUTION

You must choose which country to apply based on. Even if you're a native of more than one eligible country, you can't apply for the lottery more than once within a single year.

Immigrant Story: Applying Based on Spouse's Country

Itamar was born and lives in Brazil. Although in past years he's been able to enter the visa lottery, he has never won—and this year, Brazil was dropped off the list of eligible countries.

However, Itamar's wife Maria is a native of Argentina. So he submits a lottery application based on her country—and wins!

Assuming the U.S. consulate in Brazil can process his case quickly enough, Itamar, his wife, and their two unmarried children can become U.S. permanent residents.

2. The Educational Requirements

Applicants from qualifying countries must have either:

- a high school diploma or its equivalent, meaning a successfully completed twelve-year course of elementary plus secondary education that would qualify you to enter a U.S. college or university, or
- a minimum of two years' work experience (within the last five years) in a job that normally requires at least two years' training or experience. American job offers are not necessary. However, you won't be allowed to argue about how much experience your job requires—this judgment will be made based on a list of job titles and descriptions kept by the U.S. government in an online database called O*NET, at <http://online.onetcenter.org>. (To check this out yourself, go to the website

and click “Find Occupations,” then fill in the appropriate blank spaces to bring up various reports. Either the “summary” or “details” report will tell you how many years of experience your job needs, under the heading “Job Zone.”)

You won’t be asked to prove your educational qualifications on the lottery application—but that doesn’t mean you can puff up the truth. If you win the lottery, you will have to come up with proof of your education as part of the green card application.

B. How to Apply for the Lottery

A new application period starts every year, usually in late fall or early winter. You can submit one application—and only one. People who try to apply more than once will have all their lottery visa applications tossed out of the running. Husbands, wives, and children in the same family can, however, submit separate applications if each one who applies separately meets the educational and other eligibility criteria.

No fee is charged for applying, so watch out for websites and consultants who claim that there is, or who charge you a lot of money for supposed “special” handling. The application is fairly simple and can be done by yourself, or with minimal help from another person.



CAUTION

Registrations submitted one year are not held over to the next. So if you are not selected one year, you need to reapply the next year to be considered.

1. The Application

We can’t give you a sample application form, because there isn’t one—the one and only way to apply is online, using a computer. (In previous years, paper applications were allowed, but no longer.)

The Web address at which to apply is www.dvlottery.state.gov. It doesn’t matter what country you’re in when you submit the online application. You can start the application and then stop without submitting it, for example if you realize you’re missing a piece of information—but you cannot save or download your work. And if you try to submit an application and the system rejects it, you can try again until you succeed.

Once you start your application, the system will give you only an hour in which to submit it before it erases all the information you’ve entered. So, you’ll need to assemble all the needed information ahead of time, and plan for a time when you can complete the entire application within that hour.

Here’s what you’ll probably be asked when you go to the State Department website to apply:

1. Full name—last name (family or surname), first name, middle name
2. Date of birth—day, month, year
3. Gender—male or female
4. City where you were born
5. Country where you were born (use your country’s current name, even if it had a different name when you were born there—for example, Myanmar instead of Burma)
6. Entry photograph(s)—you’ll need to attach digital photographs of your spouse and all your children, if you have any. See the technical information on the State Department website.
7. Mailing address—in care of, address, city/town, district/country/province/state, postal code/zip code, country
8. Country where you live today
9. Phone number (optional)
10. Email address (optional)
11. What is the highest level of education you have achieved, as of today? (You don’t need to list all your schooling, just the last type

of school you completed, for example high school, vocational school, university, or graduate school.)

12. Marital status—unmarried, married, divorced, widowed, or legally separated.
13. Number of children that are unmarried and under 21 years of age (no need to mention children who are ineligible either because they are U.S. legal permanent residents or U.S. citizens or are over 21 years old or married.)
14. Spouse information—name, date of birth, gender, city/town of birth, country of birth, photograph.
15. Children information—name, date of birth, gender, city/town of birth, country of birth, photograph.



CAUTION

Be extra careful not to make typing errors.

If your application contains a typing error, particularly in the spelling of your name, the State Department may throw it out. This is because it believes that people try to cheat the system by submitting more than one application with their name spelled slightly differently.

After you've successfully completed and submitted your online application, you'll get a confirmation screen, showing your name, other personal information, and a date/time stamp. It may take several minutes before you receive this screen. The confirmation doesn't mean you've won, it simply means your application went through okay. Print out the confirmation screen for your records.

2. Notification of Winners

About five to seven months after submitting your online application, you'll be notified by mail (U.S. mail, not email) if your name has been drawn (you "won"). If your name wasn't chosen, you won't hear anything. Keep track of the State Department's intended notification date, so that you'll know

when to keep a close eye on your mail—and when to give up.

C. After You Win— The Green Card Application

Unfortunately, winning the lottery doesn't guarantee you a green card. The government always declares more than 50,000 winners—but gives out only 50,000 green cards. This means if you don't follow up quickly or receive your interview on time, the supply of green cards could run out. You'll have to complete the process and have received your visa or green card by September 30th of the year following your selection. (For example, applicants in 2007, who will be notified in 2008, will lose their chance if they can't complete the process by September 30, 2009.)

This is a serious problem. The State Department and U.S. Citizenship and Immigration Services (USCIS, formerly called the INS) are so backed up that months can go by with no action, causing you to miss your opportunity altogether. Some people's applications get stalled while their security checks are being completed by the FBI (Federal Bureau of Investigation) and CIA (Central Intelligence Agency). Even if you've never done anything wrong, just having a common name can lead to delays, as the FBI and CIA check and double check your name and fingerprints against various databases.

Another problem is that, as with all green card applications, if you win the lottery, you still must prove that you are not "inadmissible" to the United States. For example, if you have been arrested for committing certain crimes, are considered a security risk, have spent too much time in the United States illegally, or are afflicted with certain physical or mental illnesses, you may be prevented from receiving a green card. (For more on inadmissibility, see Chapter 4.)

Proving that you'll be able to support yourself financially in the U.S. can be a huge challenge for lottery winners. If you can't show this, you'll be considered inadmissible as a potential "public charge"—that is, someone who may need government financial assistance. You will need to show that you are either self-supporting, have sufficient skills and/or education to find employment, or have friends or family who will support you once you're living in the United States. In 2007, for example, the U.S. government said that a family of four would be presumed to need government assistance unless their income was \$25,000 per year or more.



SEE AN EXPERT

Don't miss your chance—get professional

help. If you've been declared a lottery winner, we strongly recommend seeking an experienced immigration lawyer's help. A good lawyer will know the latest ways to get your application through the system quickly, and who and when to ask for speeded up handling.

The exact procedures for applying for the green card depend on where you're living now, and whether you've spent any time illegally in the United States. If you're currently overseas, see Chapter 19 regarding consular processing. If you're in the United States, see Chapter 18 regarding adjustment of status. If you've got a choice, consular processing is usually a faster bet than adjusting status. Also, if you're in the United States, realize that it's very unlikely you'll be allowed to apply for the green card unless you've got a valid, unexpired visa or other status—if not, you should definitely see a lawyer for assistance.



CAUTION

Don't forget to pay the extra fees. Lottery winners must pay a "diversity visa surcharge" in addition to the regular fees for applying for a green card. At the time this book was published, the fee was \$375.

D. How to Bring Your Spouse and Children

For the lottery application itself, it's very simple to include your spouse and children—in fact, you're required to name them on your application, unless you and your spouse are legally separated (by court order) or divorced, or your children are U.S. citizens or permanent residents. Simply include your spouse and children's names, and remember to attach a digital photograph of each one to your lottery submission. (And remember that your spouse may, if eligible, submit a separate lottery application for him or herself, which includes your name and those of your children.)

It doesn't matter whether your spouse and children plan to come with you to the U.S. or not—you must still list their names and provide their photos with your lottery application. If you don't list them, they'll lose their chance to immigrate with you if you win. In fact, even if you and your spouse are no longer living together, you must provide his or her photo unless you're either legally separated (by court order) or divorced—a requirement that causes problems for some applicants.

What if you give birth to a child or get married after submitting the lottery application? That's okay—your new child and spouse will be allowed to immigrate with you if you win. However, you may be asked to provide extra proof that this relationship wasn't created fraudulently, to get the newly added person a green card.

If you win the lottery, the rules and paperwork for your family get more complicated. First, you need to figure out which family members are allowed to immigrate with you. Your spouse will be allowed, so long as you're legally married. Your children will also be allowed, so long as they're under 21 years of age and remain unmarried up to the date you're approved for green cards. Warn

your children that they must remain unmarried until they've entered the U.S., or they'll lose their eligibility!

Next, each family member must submit a separate green card application, as described in either Chapter 19 (discussing consular processing for people coming from overseas) or Chapter 18 (discussing adjustment of status for people already in the United States and lucky enough to have a right to apply for a green card without leaving). No matter where you apply, the application will consist of several forms, expensive fees, medical examination results, and more.

Fortunately, only the lead person—the one who won the lottery—is required to meet the educational and work requirements of the lottery. However, each of your family members must separately prove that he or she doesn't have any of the health, criminal, or other problems that make people inadmissible to the United States. And you'll have to show that the family as a whole isn't likely to need government assistance.

You'll also need to pay for your entire family's airfare to the United States, and for housing once you get here. You won't receive any U.S. government assistance with your transition.



CAUTION

Be careful if you have a child about to turn

21. Getting older is, of course, something your children have no control over. But a child who turns 21 before being approved for a green card is, technically, no longer eligible. Fortunately, the law contains some protections for children in this situation. When and if you are approved for green cards, your child will be allowed to subtract from his or her age the amount of time between the date you could have first applied for the lottery and the date you got the letter saying you'd won.

EXAMPLE:

Jorge applies for the DV-2009 lottery program. The first date for applying was October 3, 2007 (although Jorge didn't get around to applying until November 10th). Jorge receives a congratulatory letter dated May 24, 2008, telling him that he's been selected. A total of 233 days passed between October 3rd and May 24th. Jorge, as well as his wife and daughter, submit immigrant visa (green card) applications through their local U.S. consulate. They attend their interview on September 5, 2009. The consular officer notices that Jorge's daughter already turned 21, on June 29, 2009. However, the daughter can subtract 233 days from her age, which brings her back to age 20. (An easy way to look at this is that the daughter has been 21 for less than 233 days). The consular officer grants the entire family their immigrant visas. ●

Amerasian Immigrants

A. Who Qualifies as an Amerasian.....	150
B. Who Can Start the Process	150
C. Who Will Serve as a Sponsor?.....	150
D. How to File	151
1. Preliminary Processing.....	151
2. Stage Two of the Processing.....	151
E. Where to File.....	152

In Vietnam, they are called “bui-doi,” which means “dust of life.” In Korea, they are called “hon-hul,” which means “mixed blood.”

They are the children of American servicemen who have returned to the United States leaving behind the human results of the liaisons they had with the children’s mothers. The children are often unclaimed, unrecognized, and unwanted.

The U.S. Congress passed a law on October 22, 1982 allowing Amerasians to come to the United States as the sons or daughters of a U.S. citizen. (See I.N.A. § 204.4.) Because the shadow of the Vietnam War has receded with the passing of time, and most of those able to come to the United States have already come, the emigration of Amerasians to the United States has been reduced to a trickle. (In fact, this chapter no longer mentions requirements for Amerasians under 18, because no more could qualify at that age.)

A. Who Qualifies as an Amerasian

An Amerasian is a person who was:

- born in Korea, Vietnam, Laos, Cambodia, or Thailand
- born after December 31, 1950 and before October 22, 1982, and
- fathered by a U.S. citizen.

The Amerasian’s spouse and minor, unmarried children are eligible to immigrate along with him or her.

B. Who Can Start the Process

To begin the process of allowing the Amerasian to immigrate, someone must first submit what’s called a “visa petition” to USCIS. Unlike many other types of visas, there are several options as to who submits this petition, as follows:

- If over 18 years of age, the Amerasian can file the petition on his or her own behalf.
- Any person of legal age (18 or over), regardless of citizenship, can file the petition on behalf of the Amerasian.
- A business incorporated in the United States can also file the petition on behalf of the Amerasian.

The person filing the petition is called the “petitioner.” The Amerasian is called the “beneficiary.”



TIP

The father need not be involved. Contrary to what you might assume, the American father does not have to be the petitioner. In fact, the American father’s real name need not even be known as long as it can be proven that he was a U.S. citizen.

C. Who Will Serve as a Sponsor?

The Amerasian must have a sponsor who is either:

- a U.S. citizen, at least 21 years of age, and of good moral character
- a permanent resident in the United States who is at least 21 years of age and of good moral character, or
- a U.S. organization that will arrange to place the Amerasian with a sponsor in the United States. The organization must be able to show that:
 - it is licensed in the United States and experienced in arranging to place Amerasian children, and
 - a sponsor has been identified, and is willing and able to accept the Amerasian in his or her home.

**CAUTION**

Sponsors are essential. If the Amerasian cannot find an American family or a citizen or permanent resident to sponsor his or her stay in the United States—someone who will take financial, emotional, cultural, and social responsibility for him or her—the petition cannot be granted.

D. How to File

The paperwork required to petition for an Amerasian can be done in one stage or two. You might prefer to start with the first stage, simply to make sure USCIS will accept that the Amerasian is really the child of a U.S. citizen before you go through the added effort of identifying a sponsor and gathering documents proving the sponsor's financial and other capacity. On the other hand, if the sponsor is ready and eager to provide all the necessary documents, you'll probably get a faster green card approval by submitting everything at once.

To do the processing in two stages, submit the items listed in Section 1, below, and then wait for the go-ahead from USCIS (or for further questions, which you'll need to deal with) before submitting the items listed in Section 2.

1. Preliminary Processing

No filing fee is required for Amerasians. The petitioner should prepare the following documents:

- ☐ Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant. (See the sample form at the end of this chapter.)
- ☐ Birth certificate of the Amerasian.
- ☐ The identification card issued by the Vietnamese government if the Amerasian was born there. If the identification card is not available, provide an affidavit—a written statement sworn to before a notary public—that explains why.
- ☐ Marriage certificate of the Amerasian, if any, and proof of the termination of any prior marriages (through divorce or death).
- ☐ Photograph of the Amerasian (passport style).
- ☐ Documents to prove that the Amerasian was fathered by a U.S. citizen. The name of the father is not required. The documents may include:
 - ☐ the Amerasian's birth certificate, baptismal certificate, or any religious documents or church records
 - ☐ vital statistics on family members maintained by local civil authorities
 - ☐ affidavits from knowledgeable witnesses
 - ☐ letters, notes, or proof of financial support from the father
 - ☐ photographs of the father, especially those taken with the Amerasian, and
 - ☐ evidence of the father's U.S. citizenship, such as military serial number.

2. Stage Two of the Processing

After the I-360 petition is approved, or if you're submitting everything together, the next phase involves the sponsor, who must prepare the following documents:

- ☐ Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, signed by the sponsor. (Ask for a copy of this form from the nearest USCIS office or download it from www.uscis.gov.) Upon signing the affidavit, the sponsor becomes legally responsible for financially supporting the Amerasian. Therefore, unless the sponsor dies or becomes bankrupt, the attorney general can sue the sponsor in federal court for enforcement of the support. This affidavit, which must be signed before an immigration or consular officer, states that the sponsor agrees:

- to file for legal custody through a state court within 30 days of the arrival, if the Amerasian is a child under 18 years of age, and
- to financially support the Amerasian and any of his or her family members at 125% of the current official poverty line for the next five years, or until the Amerasian turns 21 years of age, whichever is longer.

- ☐ Proof that the sponsor is over age 21.
- ☐ Proof of the sponsor's financial capability to support and maintain the Amerasian, such as income tax returns and bank statements.
- ☐ Proof of U.S. citizenship or lawful permanent residency of the sponsor.
- ☐ Fee of \$80 for fingerprinting the sponsor. You can pay by check or money order, made out to the U.S. Department of Homeland Security.

Filing for Amerasians under age 21. If the Amerasian is under 21 years of age, he or she is classified, for visa coding purposes, as an immediate relative of a U.S. citizen. Therefore, if the Amerasian is already legally in the U.S., he or she may be entitled to submit the documents mentioned above together with the immigration papers required for adjustment of status (see Chapter 18 for instructions).

Filing for Amerasians age 21 and over or married.

If the Amerasian is 21 years of age or older, or married, he or she qualifies as an applicant in the family first preference (unmarried son or daughter of a U.S. citizen) or family third preference (married son or daughter of a U.S. citizen) discussed in Chapter 5. He or she will have to wait for a current priority date to complete the green card application process.

E. Where to File

Two places will accept the petition for the Amerasian: the USCIS office closest to the future residence of the Amerasian in the United States, and the U.S. embassy or consulate in the country where the Amerasian now lives.

For a complete list of U.S. consulates, with links to their websites, go to <http://usembassy.state.gov>.



NEXT STEP

What's next, after the Amerasian's petition has been approved and, if the Amerasian is over 21 or married, his or her priority date has become current?

The Amerasian will need to complete an application for a green card, like every other applicant. For complete instructions, see either Chapter 18 (for the lucky few eligible to adjust status while living in the U.S.) or Chapter 19 (which discusses consular processing).

Petition for Amerasian, Widow(er), or Special Immigrant, Sample Form I-360 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0020; Expires 07/31/07
**I-360, Petition for Amerasian,
Widow(er) or Special Immigrant**

START HERE - Please type or print in black ink.

For USCIS Use Only

Part 1. Information about person or organization filing this petition.

(Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want USCIS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name <u>Stuart</u>	Given Name <u>Alicia</u>	Middle Name <u>J.</u>
Company or Organization Name _____		
Address - C/O _____		
Street Number and Name <u>4602 G Street, NW</u>		Apt. # <u>4</u>
City <u>Washington</u>	State or Province <u>District of Columbia</u>	Zip/Postal Code <u>20004</u>
Country <u>United States</u>		
U.S. Social Security # <u>464-56-9217</u>	A # <u>N/A</u>	IRS Tax # (if any) <u>N/A</u>

Part 2. Classification Requested (check one):

- a. ☒ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past two (2) years
c. ☐ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☐ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain: _____

Part 3. Information about the person this petition is for.

Family Name <u>Nguyen</u>	Given Name <u>Sean</u>	Middle Name <u>T.</u>
Address - C/O <u>Bangkok Home</u>		
Street Number and Name <u>7 Singla Mai Road</u>		Apt. # _____
City <u>Bangkok</u>	State or Province _____	Zip/Postal Code _____
Country <u>Thailand</u>		
Date of Birth (mm/dd/yyyy) <u>10/01/1981</u>	Country of Birth <u>Thailand</u>	
U.S. Social Security # <u>none</u>	A # (if any) <u>none</u>	
Marital Status: ☒ Single ☐ Married ☐ Divorced ☐ Widowed		
Complete the items below if this person is in the United States:		
Date of Arrival (mm/dd/yyyy) _____	I-94# _____	
Current Nonimmigrant Status _____	Expires on (mm/dd/yyyy) _____	

Returned _____	Receipt _____
Resubmitted _____	
Reloc Sent _____	
Reloc Rec'd _____	
☐ Petitioner/Applicant ☐ Interviewed Beneficiary Interviewed	
☐ I-485 Filed Concurrently ☐ Bene "A" File Reviewed	
Classification _____	
Consulate _____	
Priority Date _____	
Remarks: _____	
Action Block _____	
To Be Completed by ☐ Attorney or Representative, if any Fill in box if G-28 is attached to represent the applicant	
VOLAG# _____	
ATTY State License # _____	

Sample Form I-360 (page 2)

Part 4. Processing Information.

Below give information on U.S. Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City <i>Bangkok</i>	Country <i>Thailand</i>
--	----------------------------

If you gave a United States address in **Part 3**, print the person's foreign address below. If his or her native alphabet does not use Roman letters, print his or her name and foreign address in the native alphabet.

Name	Address
------	---------

Gender of the person this petition is for.

☒ Male

☐ Female

Are you filing any other petitions or applications with this one? ☒ No

☐ Yes (How many? _____)

Is the person this petition is for in deportation or removal proceedings? ☒ No

☐ Yes (Explain on a separate sheet of paper)

Has the person this petition is for ever worked in the U.S. without permission? ☒ No

☐ Yes (Explain on a separate sheet of paper)

Is an application for adjustment of status attached to this petition? ☒ No

☐ Yes

Part 5. Complete only if filing for an Amerasian.**Section A. Information about the mother of the Amerasian**

Family Name <i>Nguyen</i>	Given Name <i>Mali</i>	Middle Name
------------------------------	---------------------------	-------------

Living? ☒ No (Give date of death *10/14/1993*) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage.

Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name <i>Adamczek</i>	Given Name <i>Sean</i>	Middle Name <i>Carlton</i>
--------------------------------	---------------------------	-------------------------------

Date of Birth (mm/dd/yyyy) <i>11/20/1965</i>	Country of Birth <i>United States</i>
---	--

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

n/a

Home Phone # () <i>n/a</i>	Work Phone # () <i>n/a</i>
-----------------------------	-----------------------------

At the time the Amerasian was conceived:

The father was in the military (indicate branch of service below - and give service number here): *unknown*

☐ Army ☐ Air Force ☐ Navy ☒ Marine Corps ☐ Coast Guard

☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

☐ The father was not in the military, and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.**Section A. Information about the Juvenile**

List any other names used.

Answer the following questions regarding the person this petition is for. If you answer "No," explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state? ☐ No ☐ Yes

Does he or she continue to be eligible for long term foster care? ☐ No ☐ Yes

Sample Form I-360 (page 3)

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.**Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.**

Family Name		Given Name	Middle Name
Date of Birth (mm/dd/yyyy)	Country of Birth	Date of Death (mm/dd/yyyy)	
He or she is now, or was at time of death a (check one):			
☐ U.S. citizen born in the United States.		☐ U.S. citizen through Naturalization (Show A #) _____	
☐ U.S. citizen born abroad to U.S. citizen parents.		☐ U.S. lawful permanent resident (Show A #) _____	
☐ Other, explain _____			

Section B. Additional Information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place where you and the person in Section A were married. (If you are a self-petitioning child, write: "N/A")
When did you live with the person named in Section A ? From (Month/Year) _____ until (Month/Year) _____		
If you are filing as a widow/widower, were you legally separated at the time of the U.S. citizen's death? ☐ No ☐ Yes, (attach explanation).		
Give the last address at which you lived together with the person named in Section A , and show the last date that you lived together with that person at that address:		

If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes (show child(ren)'s full names):

Part 8. Information about the spouse and children of the person this petition is for.

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Spouse ☐ Child		A #
B. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
C. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
D. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
E. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
F. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #

Sample Form I-360 (page 4)

Part 8. Information about the spouse and children of the person this petition is for. (Continued.)

G. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
H. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at a USCIS office in the United States, sign below. If you are going to file it at a U.S. consulate or USCIS office overseas, sign in front of a USCIS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit being sought.

Signature <i>Alicia J. Stuart</i>	Alicia J. Stuart	Date 09/06/2008
Signature of USCIS or Consular Official	Print Name	Date

NOTE: If you do not completely fill out this petition or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for a requested benefit and the petition may be denied.

Part 10. Signature of person preparing form, if other than above. (Sign below.)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date
Firm Name and Address		

Your Brothers and Sisters as Immigrants

A. Who Counts As Your Brother or Sister.....	158
1. Legitimate Brother and Sister	158
2. Half-Brother and Half-Sister.....	158
3. Stepbrother and Stepsister.....	159
4. Adopted Brother and Adopted Sister.....	159
B. Quick View of the Application Process.....	159
C. Detailed Instructions for the Application Process.....	159
1. Preparing the Form I-130 Visa Petition	159
2. Submitting the Form I-130 Visa Petition.....	160
D. What Happens After Filing Form I-130	160

If you are a U.S. citizen, whether by birth, naturalization, or some other means, you can petition for your brothers and sisters to immigrate—but you must be at least 21 years old when you file the petition.

What's more, your brothers and sisters will be put in the family fourth preference visa category, which is so overloaded with applicants that they'll face a wait of at least ten years, and up to 24 years for applicants from some countries. (See Chapter 5 for more information on waiting periods in visa preference categories.) Nevertheless, the years can pass surprisingly quickly, so it may be worthwhile to get the petition in and reserve your brother or sister's place on the waiting list.

Once a visa number becomes available, your brother or sister will also be able to bring in his or her spouse and any unmarried children under age 21.



TIP

Other people can petition for your brother and sister at the same time. There's no limit on the number of visa petitions that can be filed for a person—and it can be good to have more than one pending, in case one petitioner dies, for example. Let's say your parents are or become permanent U.S. residents—in that case, they could file visa petitions for your siblings (if your siblings are unmarried) in the second preference visa category, which moves much faster than the fourth preference. But you could file for your siblings as well, as a backup.

A. Who Counts As Your Brother or Sister

The immigration laws contain specific definitions setting out who qualifies as a brother and sister in every family.

When it comes time to submit the paperwork for your brothers or sisters (the “visa petition”), you'll need to prove that they fit into one of these relationship categories. The sections below

will explain the different possibilities and list the documentation that you'll need to provide as proof.

1. Legitimate Brother and Sister

If your mother and father were married and had other children, all of them are your legitimate brothers and sisters.

Be sure to add the following to your visa petition:

- ☐ your birth certificate, and
- ☐ your brothers' and sisters' birth certificates (to show that you have the same mother and father).

EXAMPLE:

Your parents raised your cook's baby as their own child. But to file a petition for that baby, you would have to present proof that your birth certificate and the other child's birth certificate show the same father and mother. Of course, you cannot do this. There is no way you can petition for this person as your brother or sister.

The only way around this strict rule is for someone in the family to legally adopt the child before the child turns 16. If that is not possible, you will have to look for another way for the child to immigrate to the United States, such as an employment visa.

2. Half-Brother and Half-Sister

If you and another person have the same mother or father, but not both parents in common, that other person is your half-brother or half-sister.

It does not matter when the relationship of half-brother or half-sister occurred. As far as the immigration law is concerned, you can petition for them just as if they were your full-blooded brothers or sisters.

Be sure to add the following to your visa petition:

- ☐ your birth certificate, and
- ☐ your half-brothers' or sisters' birth certificates (showing that you have one parent in common).

3. Stepbrother and Stepsister

If your mother or father has married somebody who had children from a previous marriage or relationship, the children of your stepfather or stepmother would be your stepbrothers and stepsisters.

However, for purposes of immigration into the United States, you can file a petition for them only on one condition: Your mother or father must have married your stepparent before your 18th birthday.

Be sure to include the following documents with your visa petition:

- ☐ your birth certificate
- ☐ the birth certificates of your stepbrothers or stepsisters, and
- ☐ the marriage certificate of your mother or father and your stepparent, or documents showing that the marriage ended by death, divorce, or annulment.

4. Adopted Brother and Adopted Sister

If your mother and father have adopted a child according to the laws of the state or country they are in, that child is your adopted brother or adopted sister. Or, you may have been adopted by parents who may have other legitimate children of their own. Their children became your brothers and sisters when you were adopted into their family.

However, you can petition for your adopted sibling only if the adoption decree occurs before the 16th birthday of your adopted brother or sister if they are the petitioners, or before your own 16th birthday if you were the adopted child.

Be sure to include the following with your visa petition:

- ☐ the adoption decree, and
- ☐ your and your siblings' birth certificates to show you had the same parents.

B. Quick View of the Application Process

To get a green card as a brother or sister, the U.S. citizen must begin the process by submitting what's called a "visa petition" (using USCIS Form I-130). We're going to assume that the person reading this is the U.S. citizen.

Form I-130 serves to prove to the immigration authorities that your siblings are truly and legally yours. After that petition is approved, your siblings must complete their half of the process (with your help, of course) by submitting green card applications and attending interviews, possibly with you accompanying them. Their applications serve to prove that not only do they qualify as the brothers or sisters of a U.S. citizen, but that they're otherwise eligible for U.S. permanent residence.

However, the details of when and how your brothers or sisters complete their half of the process depend on whether they are living overseas or in the United States, as described in Section D, below.

C. Detailed Instructions for the Application Process

Now we'll break the application process down into individual procedures, some of which will be covered in this chapter, and others in later chapters—we'll tell you exactly where to turn for your situation. We'll start by discussing the visa petition, which the U.S. citizen must always prepare to begin the process.

1. Preparing the Form I-130 Visa Petition

To prepare the visa petition, the U.S. citizen will need to assemble and prepare the following:

- ☐ Form I-130, Petition for Alien Relative (available at www.uscis.gov; see the sample at the end of this chapter)

- ☐ copy of a document proving your U.S. citizenship, such as a birth certificate, naturalization certificate, or passport
- ☐ copy of your birth certificate
- ☐ copy of your immigrating brother or sister's birth certificate
- ☐ any other required proof of your relationship as detailed in Section A, above
- ☐ if you or any of your brothers and sisters have changed your name from the name that appears on the birth certificate, a copy of a marriage certificate or court document that explains the change, and
- ☐ filing fee (currently \$355, but double check the USCIS website at www.uscis.gov). Pay this by check or money order—don't send cash. Make it out to the U.S. Department of Homeland Security.

2. Submitting the Form I-130 Visa Petition

When you've prepared and assembled all the items on the above list, make a complete copy of everything for yourself (even the check or money order—your copy will be helpful if USCIS loses the application, which happens more often than it should). Then send it to USCIS's Chicago "lockbox," which will forward it to the appropriate USCIS office—you can find mailing information on the USCIS website, www.uscis.gov. (Go to the section on "Immigration Forms" and scroll down until you find Form I-130. Then follow the instructions.)

After USCIS receives your application and determines that you haven't left anything out, it will send you a receipt notice. Don't expect a final decision on the visa petition for many years, however. USCIS often decides to wait until a visa will soon be available to the immigrants before making a decision on the application—which, in the case of brothers and sisters, could be ten or more years away.

Immigrant Story: Reuniting Brother and Sister

Karl, from Sweden, became a U.S. permanent resident after winning the visa lottery. Although most of his family is uninterested in joining him in the United States, his twin sister, Karla, is extremely close to Karl and swears she'll never live more than 20 miles away from him.

Unfortunately, Karl must wait until he is a U.S. citizen to file a visa petition for Karla. As soon as his required five years of permanent residence have passed, he files a petition for naturalization. Within a year, Karl is a U.S. citizen. Now he petitions for Karla in the fourth preference category: But unfortunately, the wait in this category is over ten years long. During that time, Karla marries and has two children.

At last, Karla's priority date becomes current. After talking to her husband, they agreed to give life in the U.S. a try. Based on Karl's original application, Karla and her husband and children all apply for and receive U.S. green cards.

D. What Happens After Filing Form I-130

And now, your brothers or sisters must sit back and wait. There is no way to hurry up the process—see Chapter 5 for details on the visa preference system, and for information on how to track your brothers' or sisters' progress on the waiting list (using their priority dates).

Having a visa petition on file does not give your brothers or sisters any right to stay in the United States. In fact, it could cause them problems when they apply for tourist or other temporary visas, because the State Department will know that they also have plans to stay in the U.S. permanently.

If your brothers or sisters are already in the United States, they cannot become permanent

residents unless they remain in legal status during all the time they are in the country. They will probably have to return to their home country and proceed with consular processing (see Chapter 19), unless they're lucky enough to qualify for adjustment of status in the U.S. (see Chapter 18).

If your brothers or sisters are in the U.S. illegally, or have spent six or more months here illegally since 1997, they should talk to a lawyer about whether they'll be found inadmissible and barred from returning.

Once the immigrant visa is available to your brothers or sisters, they can extend the immigration privilege to their spouses and all unmarried children under 21 years of age at the same time, as "accompanying relatives."



CAUTION

A brother or sister who wants to come to the United States to visit during the waiting period must tell the U.S. consul when applying for a tourist or business visa that he or she has an approved visa petition. To be silent about this important fact will be looked upon as fraud in an immigrant visa file—and may mean a lost chance for a green card in the future. On the other hand, to be approved for the visa, he or she will need plenty of evidence of intent to return on time.

Petition for Alien Relative, Sample Form I-130 (as used for immigrating siblings of U.S. citizens) (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB #1615-0012; Expires 11/30/07

I-130, Petition for Alien Relative**DO NOT WRITE IN THIS BLOCK - FOR USCIS OFFICE ONLY**

A# Section of Law/Visa Category ☐ 201(b) Spouse - IR-1/CR-1 ☐ 201(b) Child - IR-2/CR-2 ☐ 201(b) Parent - IR-5 ☐ 203(a)(1) Unm. S or D - F1-1 ☐ 203(a)(2)(A) Spouse - F2-1 ☐ 203(a)(2)(A) Child - F2-2 ☐ 203(a)(2)(B) Unm. S or D - F2-4 ☐ 203(a)(3) Married S or D - F3-1 ☐ 203(a)(4) Brother/Sister - F4-1	Action Stamp 	Fee Stamp Petition was filed on: _____ (priority date) ☐ Personal Interview ☐ Previously Forwarded ☐ Pet. ☐ Ben. "A" File Reviewed ☐ I-485 Filed Simultaneously ☐ Field Investigation ☐ 204(g) Resolved ☐ 203(a)(2)(A) Resolved ☐ 203(g) Resolved
Remarks: 		

A. Relationship You are the petitioner. Your relative is the beneficiary.

1. I am filing this petition for my: ☐ Husband/Wife ☐ Parent ☒ Brother/Sister ☐ Child	2. Are you related by adoption? ☐ Yes ☒ No	3. Did you gain permanent residence through adoption? ☐ Yes ☒ No
--	---	---

B. Information about you

1. Name (Family name in CAPS) (First) (Middle) GRAY Alexandria Elaine
2. Address (Number and Street) (Apt. No.) 555 Glasgow Road (Town or City) (State/Country) (Zip/Postal Code) Mission Hills Kansas/USA 66208
3. Place of Birth (Town or City) (State/Country) Brussels Belgium
4. Date of Birth 03/22/1982
5. Gender ☐ Male ☐ Female
6. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name) BOFFIN, Alexandria Elaine none
8. Date and Place of Present Marriage (if married) 06/15/2002, Bird City, Kansas
9. U.S. Social Security (if any) 123-12-1234
10. Alien Registration Number N/A
11. Name(s) of Prior Husband(s)/Wife(s) N/A
12. Date(s) Marriage(s) Ended N/A

C. Information about your relative

1. Name (Family name in CAPS) (First) (Middle) BOFFIN Ignace Anton
2. Address (Number and Street) (Apt. No.) Van Cuppenstraat 85 (Town or City) (State/Country) (Zip/Postal Code) Antwerp Belgium B-222
3. Place of Birth (Town or City) (State/Country) Brussels Belgium
4. Date of Birth 07/29/1977
5. Gender ☐ Male ☐ Female
6. Marital Status ☐ Married ☐ Single ☐ Widowed ☐ Divorced
7. Other Names Used (including maiden name) None
8. Date and Place of Present Marriage (if married) 07/19/2000, Antwerp, Belgium
9. U.S. Social Security (if any) None
10. Alien Registration Number None
11. Name(s) of Prior Husband(s)/Wife(s) N/A
12. Date(s) Marriage(s) Ended N/A

13. If you are a U.S. citizen, complete the following:

My citizenship was acquired through (check one):
☐ Birth in the U.S.
☒ Naturalization. Give certificate number and date and place of issuance.
 14532, 12/13/2006, Kansas City, MO
☐ Parents. Have you obtained a certificate of citizenship in your own name?
☐ Yes. Give certificate number, date and place of issuance. ☐ No

14. If you are a lawful permanent resident alien, complete the following:

Date and place of admission for or adjustment to lawful permanent residence and class of admission.

14b. Did you gain permanent resident status through marriage to a U.S. citizen or lawful permanent resident?

☒ Yes ☐ No

13. Has your relative ever been in the U.S.? ☒ Yes ☐ No**14. If your relative is currently in the U.S., complete the following:**

He or she arrived as a:
(visitor, student, stowaway, without inspection, etc.)

Arrival/Departure Record (I-94)	Date arrived
Date authorized stay expired, or will expire, as shown on Form I-94 or I-95	

15. Name and address of present employer (if any)

The Belgian Observer

Date this employment began

04/20/1997

16. Has your relative ever been under immigration proceedings?

☒ No ☐ Yes Where _____ When _____
☐ Removal ☐ Exclusion/Deportation ☐ Rescission ☐ Judicial Proceedings

INITIAL RECEIPT _____ RESUBMITTED _____ RELOCATED: Rec'd _____ Sent _____ COMPLETED: App'd _____ Denied _____ Ret'd _____

Form I-130 (Rev. 07/30/07)Y

Sample Form I-130 (page 2)

C. Information about your alien relative (continued)**17. List husband/wife and all children of your relative.**

(Name)	(Relationship)	(Date of Birth)	(Country of Birth)
Eline Margaux BOFFIN	Wife	08/01/1978	Belgium
Justine Chloe BOFFIN	Daughter	09/04/2003	Belgium

18. Address in the United States where your relative intends to live.

(Street Address)	(Town or City)	(State)
555 Glasgow Road	Mission Hills	Kansas

19. Your relative's address abroad. (Include street, city, province and country) Phone Number (if any)

Van Cuppenstraat 85, B-222 Antwerp, Belgium 02-123 45 67

20. If your relative's native alphabet is other than Roman letters, write his or her name and foreign address in the native alphabet.

(Name) Address (Include street, city, province and country):

21. If filing for your husband/wife, give last address at which you lived together. (Include street, city, province, if any, and country):

From: To:

22. Complete the information below if your relative is in the United States and will apply for adjustment of status.

Your relative is in the United States and will apply for adjustment of status to that of a lawful permanent resident at the USCIS office in:

If your relative is not eligible for adjustment of status, he or she will apply for a visa abroad at the American consular post in:

(City)	(State)	(City)	(Country)

NOTE: Designation of an American embassy or consulate outside the country of your relative's last residence does not guarantee acceptance for processing by that post. Acceptance is at the discretion of the designated embassy or consulate.

D. Other information**1. If separate petitions are also being submitted for other relatives, give names of each and relationship.****2. Have you ever before filed a petition for this or any other alien?** ☐ Yes ☒ No

If "Yes," give name, place and date of filing and result.

WARNING: USCIS investigates claimed relationships and verifies the validity of documents. USCIS seeks criminal prosecutions when family relationships are falsified to obtain visas.

PENALTIES: By law, you may be imprisoned for not more than five years or fined \$250,000, or both, for entering into a marriage contract for the purpose of evading any provision of the immigration laws. In addition, you may be fined up to \$10,000 and imprisoned for up to five years, or both, for knowingly and willfully falsifying or concealing a material fact or using any false document in submitting this petition.

YOUR CERTIFICATION: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit that I am seeking.

E. Signature of petitioner.

Alexandria E. Gray

Date 08/05/2008 Phone Number (310) 555-1515

F. Signature of person preparing this form, if other than the petitioner.

I declare that I prepared this document at the request of the person above and that it is based on all information of which I have any knowledge.

Print Name Signature Date

Address G-28 ID or VOLAG Number, if any.

Refugees and Political Asylees

A. Who Qualifies.....	167
1. The Difference Between Asylees and Refugees.....	168
2. Challenges in Proving Your Case.....	168
B. Who Is Barred From Qualifying.....	168
1. Those Who Have Assisted in Persecution.....	168
2. Those Who Threaten U.S. Safety or Security.....	169
3. Those Who Have Resettled.....	169
C. How to Apply for Refugee Status.....	169
1. Filing the Application.....	169
2. Refugee Interview.....	170
3. Action on Your Refugee Application	170
4. When Refugees Can Apply for a Green Card.....	170
5. If Your Green Card Is Denied	170
D. How to Apply for Political Asylum	170
1. Where to Request Asylum.....	170
2. Asylum Applications at the Border or Port of Entry.....	171
3. Preparing and Filing Your Asylum Application	171
4. USCIS Asylum Offices—Where to File.....	173
5. USCIS Interview	173
6. Comments of the Department of State.....	173
7. Decision by the Asylum Officer.....	174
E. If Your Asylum Application Is Denied.....	174
F. Asylees Can Bring Overseas Spouses and Children to the United States.....	175
G. Getting a Green Card After Asylum Approval	176
H. Revocation of Asylee Status	176

I. Temporary Protected Status (TPS).....	177
1. TPS Benefits.....	177
2. Who Designates the TPS Aliens	177
3. Period of Protected Status.....	177
4. Who Qualifies for TPS.....	177
5. Who Is Not Eligible for TPS.....	178
6. No Departure From the U.S. Allowed	178
7. How to Apply for TPS.....	178
8. Termination of TPS.....	179
J. Deferred Enforced Departure (DED)	179

Since the Refugee Act of 1980 was passed by the U.S. Congress, many people fleeing persecution from their own countries have found a permanent haven in the United States. Those who made it to the U.S. on their own applied for what's called "political asylum." (An unlimited number of people can apply for asylum every year.) Others were granted refugee status and a right to come to the U.S. while they were overseas. The U.S. president limits the number of refugees who'll be accepted every year—in recent years, the maximum has been set at between 70,000 and 90,000. Those fleeing natural disasters or war do not receive this permanent protection, but may receive what is called Temporary Protected Status. (See Section I, below.)



SEE AN EXPERT

Consult an expert. This chapter explains the basic procedures and describes the immigration forms required for those claiming status as refugees and political asylees. However, the full legal process requires much more than filling out forms. You must present the facts of your case, in detail, in a convincing and compelling manner. If, after reading the chapter, you decide that you may qualify as a refugee or political asylee, it is best to consult an experienced immigration lawyer or other immigration professional. Many nonprofit organizations offer free or low-cost services to people fleeing persecution. (See Chapter 24.)

A. Who Qualifies

To qualify as either a refugee or a political asylee you must be unable or unwilling to return to your country because of actual persecution or a well-founded fear of persecution on account of your:

- race
- religion
- nationality
- membership in a particular social group, or
- political opinion.

Persecution can include such things as threats, violence, torture, inappropriate access or imprisonment, or a failure by the government to protect you from such things.

You do not have to provide evidence that you would be singled out individually for persecution if you can establish that:

- there is a pattern or practice in your country of persecuting groups of people similarly situated to you
- you belong to or identify with the groups of people being persecuted so that your fear is reasonable, and
- your government persecutes its nationals or residents so that you have had to leave your country without authorization or you have sought asylum in another country.

The persecution may have been by your government, or you can claim asylum by showing that you were persecuted by a group that your government is unable or unwilling to control, or that you fear such persecution.

For example, these might include guerrilla groups, warring tribes, or organized vigilantes. Again, however, the persecution must have some political or social basis—a member of a criminal network who comes after you just because you haven't paid him off is not persecution according to refugee law.

Although the law does not list types of persecution, it does, in one section, specify that refugees and asylees can include people who have undergone or fear a "coercive population control program" (such as forced abortion or sterilization). This provision was directed mainly at mainland China.

In recent legal developments, the U.S. government has recognized persecution based on gender (usually based on the "particular social group" category). This has allowed some applicants to gain protection based on having undergone or fearing

cultural practices such as female genital cutting or forced marriage.

1. The Difference Between Asylees and Refugees

The difference between someone who can claim “asylee” status and someone who can claim “refugee” status has nothing to do with basic eligibility (both must meet the same standards). It simply refers to where you are when you file the application. To apply to be a refugee, you must be outside your country of nationality or country of residence but not within the borders of the United States. To apply to be a political asylee, you must be either at the border or already inside the United States.

In addition, the president of the United States is empowered to recognize as a refugee any person who is still residing in his or her own country.

2. Challenges in Proving Your Case

The biggest challenge in applying, especially for asylees, is proving that you were, in fact, persecuted. You can’t just say “I was persecuted” and expect to get a green card. But you probably didn’t come to the U.S. with a lot of documents to prove what happened, if indeed any such documents exist. Nevertheless, you are required to at least attempt to obtain corroborating evidence of your persecution. (That’s a fairly new development in U.S. asylum law, based on the 2005 REAL ID Act.)

Succeeding with your application will depend a great deal on your own ability to tell a detailed, compelling story of what occurred, including names, dates, places, and more. You’ll probably need to write down the dates when everything you’re talking about happened, and then memorize them (unless you already have a better memory than most people, who probably couldn’t tell you where they were on a particular date last week, much less last year).

Also realize that the judge deciding your case is allowed to take into account your demeanor when testifying, as well as any previous statements you made while not under oath. This can create problems for people who, for example, have been culturally trained not to look anyone in the eye. Looking someone straight in the eye is, in the U.S., considered a sign of honesty, and the judge may interpret looking at your hands or at the floor as a sign that you’re lying.

If you underwent torture or suffered other medical or psychological stress, it may help to get a written evaluation by a doctor who is trained in this area and can verify that you suffer from the effects of these things.

You’ll also need to show that your own story matches up with accounts by independent sources of what goes on in your country. A good asylum application is accompanied by a thick stack of newspaper clippings, human rights reports, and more, all containing information about the kind of human rights violation you’re describing. If, for example, you fled because local government officials were threatening to imprison you because you sent a letter to the editor protesting a political matter, you’d need to provide evidence that others who expressed similar political opinions have been imprisoned or threatened with prison. (And you’d definitely want to produce a copy of the newspaper’s printing of your letter.)

B. Who Is Barred From Qualifying

A number of people are prohibited from becoming refugees or asylees in the United States.

1. Those Who Have Assisted in Persecution

The opportunity for refugee or political asylum status is not open to anyone who has ordered,

incited, assisted, or participated in the persecution of any other person owing to that person's race, religion, nationality, membership in a particular social group, or political opinion.

For example, this rule is often used to deny refugee status to military or police officials who assisted in persecuting minority or guerrilla groups (even though they may, indeed, fear for their life because members of those groups are seeking revenge against them).

2. Those Who Threaten U.S. Safety or Security

No one who has been convicted of a “particularly serious crime” and is therefore a danger to the community of the United States will be granted refugee or asylee status. There is no list of particularly serious crimes—the decision is made case by case, depending on the facts surrounding the crime. However, all “aggravated felonies” are considered particularly serious crimes—and, because of the immigration laws’ strict definitions of aggravated felonies, some crimes that may have been called misdemeanors when committed will be looked upon as aggravated felonies.

In addition, no person who has been convicted of a serious nonpolitical crime in a country outside the United States will be granted refugee or asylee status. However, people whose crimes were nonserious or political in nature may still qualify.

Furthermore, no person who has been involved in terrorist activity or who can reasonably be regarded as a threat to U.S. security will be granted refugee or asylee status.

As discussed in Chapter 4, the definition of who is a “terrorist” is broader than you might expect. It could, for example, be interpreted to cover people who have provided food or other “material support” to guerillas or others trying to overthrow the government, or people who have given money to organizations whose aims the U.S. government believes are, at least in part, terrorist in nature.

Asylum applicants who provided material support under duress (for example, at gunpoint) can in some cases overcome this barrier.

3. Those Who Have Resettled

Refugee status is also denied to refugees or political asylees who have become “firmly resettled” in another country. A person is usually regarded as firmly resettled if he or she has:

- been granted permanent residency or citizenship by that country
- made permanent housing arrangements and has traveled in and out of the adopted country, or
- achieved economic independence because of education, employment, or the exercise of profession or business affairs in the adopted country.

C. How to Apply for Refugee Status

If you are outside the U.S. and believe you qualify as a refugee, there are a number of documents you are required to file—and a number of steps you must follow.

1. Filing the Application

You must prepare and submit the following forms:

- ☐ Form I-590, Registration for Classification as Refugee
- ☐ documentation of persecution or a detailed affidavit supporting your request for classification as a refugee
- ☐ Form G-325C, Biographical Information—for applicants 14 years old or over
- ☐ Form I-134, Affidavit of Support, from a sponsor (a responsible person or organization) for your transportation to the place of resettlement in the United States, and

- ❑ a medical examination report to ascertain that you are mentally sound and do not have a serious communicable disease.

The date on which you file the refugee status application is called your “priority date,” and shall be the basis for determining when you will be allowed to enter the United States as a refugee. As stated earlier, the number of refugees allowed each year is limited and set by the U.S. president.

2. Refugee Interview

After submitting your application, you will be interviewed by an overseas immigration officer who will decide whether you have been persecuted or have a well-founded fear of persecution because of your race, religion, nationality, political opinion, or membership in a particular social group.

3. Action on Your Refugee Application

If the overseas immigration officer decides that you meet the requirements and may be designated as a refugee, the application will be granted and you will be given a “parole visa.” After your application is approved, you have four months in which to enter the United States.

If the application is denied, there is no appeal. You have no further recourse because you are outside the United States and its legal mechanism of judicial review.

Once you have been granted status as a refugee, you will be granted work authorization for one year as soon as you enter the United States.

4. When Refugees Can Apply for a Green Card

After one year of physical presence as a refugee in the United States, during which you must not have violated certain laws or regulations, you, your spouse, and your children may apply for permanent residence (a green card).

If you are found to be eligible, you and your family will be given lawful permanent resident status. The date of your permanent residence will be the date that you first arrived in the United States as a refugee. You will be eligible to apply for citizenship five years from that date.

5. If Your Green Card Is Denied

If you are found ineligible for permanent residency, removal proceedings may be started against you and your family, and you will have to present your cases before an immigration judge. If this happens, consult with an experienced immigration lawyer who specializes in removal cases. (See Chapter 25.)

D. How to Apply for Political Asylum

If you are interested in applying for political asylum, you must fill out various forms and explain your case to a USCIS officer or judge.

1. Where to Request Asylum

You can request asylum:

- upon arrival at the border or port of entry, if you are an alien stowaway, a crewman, or a passenger seeking admission into the United States
- at a removal hearing before the immigration judge, or
- by sending an application to USCIS, after which you’ll be interviewed at one of the USCIS Asylum Offices. You can apply for asylum even if you’re in the U.S. illegally—but understand that your application will be acted on within a matter of weeks, and if it’s denied, you’ll probably be deported.

**CAUTION**

Don't delay in preparing your application (if you're already in the U.S. and not in removal proceedings). The law says that applications for asylum must be submitted within one year of your entry into the United States. If you entered on a visa (that is, not illegally), USCIS policy is to stop the clock at either one year after your entry or "a reasonable time" after your lawful stay ends, whichever is later. Usually, "a reasonable time" is not more than six months after the end of a lawful stay. So look again at your Form I-94, note the expiration date, and make sure to apply for asylum within six months of that date, if not sooner. Similarly, time during which you had Temporary Protected Status (discussed in Section I, below) does not count toward your one year. If you've already spent more than a year here, talk to an immigration attorney. Exceptions are possible in rare cases, based on changed country conditions, changes in your circumstances that affect your eligibility for asylum, or other compelling reasons.

2. Asylum Applications at the Border or Port of Entry

If you arrive at a U.S. border or port of entry and the officer says your visa isn't valid or you can't be admitted to the U.S., you can request political asylum. The officer is supposed to refer you to another officer who is trained to understand, based on very little information, whether you have a valid claim. Unfortunately, these officers do not act consistently, and there are many tragic reports of people being turned around and sent back to places where they were physically harmed.

If the officer denies your entry despite your request for asylum, you won't be allowed to reapply for U.S. entry for five years. You can, however, get around this by withdrawing your request for entry—in other words, by saying you changed your mind and don't want to enter the U.S. after all. But the border official has the option of deciding whether to allow you to get around the system in this way.

If the officer with whom you meet thinks you have a possible asylum case, you'll be placed in removal proceedings, where an immigration judge will consider your asylum claim (and any other relevant claims for immigration benefits you want to make). At this point, you'll have to prepare the application described in Section 3, below—and you should, if at all possible, get an attorney's help.

Immigrant Story: Filing Beyond the One-Year Deadline

Roberto came to the United States alone, without a visa or documents, when he was 14 years old. Three years later, he came out as a homosexual, and became publicly and actively involved in gay rights causes. Then, during a demonstration, Roberto was arrested by immigration agents.

Because Roberto had already been in the U.S. for three years, his lawyer had to make a special request to the judge to extend the one-year deadline for filing for political asylum.

Fortunately, the judge agreed to hear the asylum application based on two grounds: 1) that Roberto had entered the U.S. as an unaccompanied minor, and therefore could not have been expected to know about the one-year asylum filing deadline, and 2) that Roberto's circumstances had changed since he publicly came out as a homosexual, which could make him subject to persecution in El Salvador.

3. Preparing and Filing Your Asylum Application

The following documents should be mailed to a USCIS Regional Service Center, if you are not in removal proceedings, or to the Immigration Court, if you are already in proceedings:

- ❑ Form I-589, Application for Asylum and for Withholding of Removal—one original

and two copies. (See the sample at the end of this chapter.) Also make two copies of all supplementary documents. There is no filing fee for this form. Your spouse and children may be included in the application, as long as you supply an additional copy of your filled-out Form I-589 and attached documents for each. If you include your family members, they will also be granted asylum if you win or be placed in removal proceedings with you if you lose. (Regardless of whether you take the required steps to officially include them, you must provide their names and other requested information on your Form I-589.)

- ☐ One color passport-style photo of you and each family member applying with you. Write the person's name in pencil on the back.
- ☐ Copies (three) of your passports (if you have them) and any other travel documents (including from USCIS or the border authorities, such as an I-94 card).
- ☐ Copies (three) of documents to prove your identity, such as a birth certificate, driver's license, or national identity document ("cedula").
- ☐ Copies (three) of documents to prove the relationships between the family members applying, such as birth and marriage certificates.
- ☐ Documentation (three copies) of your experience and the human rights situation in your country, showing why you fear to return, supported by your own detailed written statement.
- ☐ If possible, also include statements (three copies) of any witnesses, doctors, friends, relatives, or respected leaders of your community, relevant news reports, or letters from people in your country.

Applying for a Work Permit

Some years ago, people were eligible for a work permit as soon as they submitted an application for political asylum—but no more. Now, in order to be given a work permit, you have to either win your case—which may take several years and many appeals—or be lucky enough to be left waiting for an unusually long time (150 days or more) with no initial decision on your application. This obviously creates hardships for asylum applicants, who have to find money to live on, and potentially pay their lawyers with, until the case is won. For this reason, you may want to find help from the lawyers at a nonprofit organization, who, if you're financially needy, will charge little or no fees.

If you get lucky and the 150 days pass with no decision, or if your application for asylum is approved, you'll need to take steps to apply for a work permit (more formally known as an Employment Authorization Document, or EAD). Do so by filling out Form I-765 (available on the USCIS website). Most of this form is self-explanatory. On Question 16, applicants who've been waiting for 150 days or more with no decision should enter "(c)(8)." Those whose asylum application has already been approved should enter "(a)(5)." Follow the instructions on the form regarding what to include and where to take or send it.

If your asylum application is denied before a decision has been made on your EAD application, USCIS will deny the work permit. If USCIS has already sent a work permit, however, your work permission terminates when the card is marked to expire or 60 days after asylum is denied, whichever is later.

**CAUTION****Documents not in English must be translated.**

You'll have to provide a word-for-word English translation of any document in another language. Any capable person can do this, but should, on their translation, add the following text at the bottom: "I certify that I am competent in both English and [*your language*], and that the foregoing is a full and accurate translation into English, to the best of my knowledge and ability." The person should sign his or her name and add the date under this statement.

Not long after receiving your application, USCIS will call you in to have your fingerprints taken (if you're over age 14). This is to make sure that you don't have a record of criminal or terrorist acts and that you haven't applied for asylum before.

4. USCIS Asylum Offices— Where to File

There are four regional service centers that handle all asylum applications. Where you file depends on where you live. (See the USCIS website at www.uscis.gov for complete office addresses, including the correct post office box. Click "Field Office Addresses and Information.")

5. USCIS Interview

After your papers have been processed at the USCIS Service Center, you will be called in to have your fingerprints taken, and, within a few weeks, you'll get an appointment at one of the USCIS Asylum Offices. There, you will be interviewed to determine whether you are eligible for political asylum. Interviews last around 30 minutes.

If you aren't comfortable in English, you'll need to bring your own translator. This doesn't have to be a hired professional—a family member or friend will do. But if your friends and family aren't truly fluent in both English and your own language, it's worth spending the money on a professional. Many asylum interviews have gone badly because the

translator wasn't fully competent and the asylum officer, not knowing of the problem, assumed that the applicant couldn't get his or her story straight. For example, we know of a case in which the interpreter repeatedly translated the Spanish word "padres" (which means parents) as "father." The applicant was testifying about the death of both his parents in Guatemala, and the interviewer became very suspicious when he suddenly appeared to be talking about only his father.

Expect the interviewer to begin by reviewing some of the basic items in your application, such as your name, address, and date of entry into the U.S., then to move quickly into open-ended questions such as "Why are you afraid to return to your country?" The interviewer may interrupt you at any point. He or she may also ask questions you never expected, sometimes to test whether you are who you claim to be. For example, if you claim to be a member of a persecuted Christian minority in a Middle Eastern country, you might be asked questions about Christian doctrine. These interviewers are highly trained in the human rights situations of countries around the globe, and many of them have law degrees, so expect some intelligent, probing questions.

Whether the interviewer will behave courteously is another matter. Many of them are sympathetic people who took this job because they're interested in human rights issues—others are government bureaucrats whose first concern is to ferret out cases of fraud. You won't be able to choose your interviewer. Women who have been raped or experienced similar trauma can, however, request a female interviewer.

6. Comments of the Department of State

When USCIS receives your application, the officer may send a copy to the Bureau of Human Rights and Humanitarian Affairs (BHRHA) of the U.S. Department of State for comments on:

- the accuracy of the assertions on the conditions in the foreign country and the experiences described
- how an applicant who returned to the foreign country would be likely to be treated
- whether people who are similarly situated as the applicant are persecuted in the foreign country and the frequency of such persecution, and
- whether one of the grounds for denial may apply to the applicant.

However, the process usually goes faster than the BHRHA's ability to provide comments. Almost no one receives these comments anymore.

Protection Under the U.N. Convention Against Torture

Even if you don't qualify for asylum, you may be protected from deportation by the United Nations Convention Against Torture. This prohibits deporting anyone who can show that he or she is more likely than not to suffer torture at the hands of his or her home country's government. The asylum application has a place to mention whether you feel you qualify for this protection. However, it won't get you a green card—it will just stop USCIS from deporting you. Whether USCIS will also allow you a work permit is up to its discretion.

7. Decision by the Asylum Officer

After interviewing you, the asylum officer has full discretion to approve or deny your application for political asylum. However, you won't be told the decision that day. You'll have to return to the USCIS Asylum Office at an appointed time to pick up your decision from the front desk.



CAUTION

You may have friends who applied for asylum years ago and are still waiting for an interview. Because of a huge backlog of applications, USCIS has started

acting quickly on the cases of people who are just now applying, while it tries to deal with the older, backlogged cases a few at a time. Your case will probably be decided in six months or less—even though you may know people who've waited six years or more.

If you're approved, you'll be given a document stating this. Take good care of this document, and make copies to keep in safe places. You'll need it to apply for your Social Security card, work permit, and green card (permanent resident) status in a year.



TIP

Need to travel after you've gained asylum?

Don't leave the U.S. without first obtaining a refugee travel document allowing you to return. The application is made on Form I-131; see the USCIS website for the form and instructions. Allow several weeks for the document to be approved. Also, if at all possible, do not return to the country that persecuted you—this will be taken as a sign that you aren't really in danger there after all, and you may not be allowed to return to the United States. If you feel you have no choice but to return to your home country, talk to an experienced immigration attorney before you leave.

E. If Your Asylum Application Is Denied

If the asylum officer denies your application for political asylum, he or she will also serve you with papers to start your removal proceedings before the Immigration Court. Get an attorney to help you.



CAUTION

Missing the court hearing: an expensive mistake. If, after you have been notified orally and in writing of the time, place, and date of the hearing, you fail to attend an asylum hearing before an immigration judge, you will be ordered deported and will never be able to adjust your status, obtain voluntary departure, or be granted suspension of deportation.

The immigration judge may go ahead and hold the hearing without you being present—and issue an order of deportation if the evidence presented by USCIS supports it. You will be unable to request any green card until five years from the date of the asylum hearing that you failed to attend.

Only “exceptional circumstances beyond your control,” such as your own serious illness or the death of an immediate relative, are considered to be valid excuses for failing to appear before the immigration judge. Your lawyer will need to file a motion to reopen the order of your deportation.

If the immigration judge denies your case, you are free to pursue the case to the Board of Immigration Appeals (BIA) and from there to the federal district court. In the meantime, while your case or your appeal is pending, you are able to remain in the United States. If you have already received work authorization, it will continue to be granted for one year at a time. If you haven't, you'll have to continue living with no income.

Some people turn around after they've been denied asylum and try to apply for it again. This won't work. First of all, it's not allowed, and second, USCIS has your fingerprints on file and will check them, so even if you change your name, you'll get caught.

F. Asylees Can Bring Overseas Spouses and Children to the United States

If you're granted political asylum and you have a husband, wife, or unmarried minor (under age 21) child still living in the country that persecuted you, you have the right to request asylum for them, too. But you must act within two years of when you're granted asylum, or they'll miss their chance (at least, until you're a permanent resident or U.S. citizen and can petition for them, but this takes years). No other relatives are eligible—you cannot, for example, bring your parents or grandchildren.



CAUTION

Getting married after you've won asylum

won't do it. As an asylee, you can bring in your spouse only if you and he or she were already married when you were granted asylum. If, however, your wife gave birth to a child after you won asylum, you can bring the child in so long as it was in the womb when you were granted asylum.

The procedure for bringing your spouse and children to join you is to prepare and assemble the following (use separate forms and documents for each person):

- ☐ Form I-730, Refugee/Asylee Relative Petition, available from USCIS or on its website at www.uscis.gov (see the sample at the end of this chapter; and don't be confused by the second question on the sample, which says the asylee is filing for three relatives; that just means he and his wife have two children, who will be named in separate Forms I-730).
- ☐ a copy of the document granting you asylum
- ☐ a clear photograph of your family member
- ☐ a copy of proof of the relationship between you and the person you're applying for—a marriage certificate for your spouse, or a birth certificate for your child (if an adoption certificate, the adoption must have occurred before the child was 16), plus a marriage certificate in your child's petition if you're the child's father or stepparent, and
- ☐ if your child is adopted, evidence that he or she has been living in your legal custody for the last two years.

There is no filing fee. For more detailed information, see the instructions that come with Form I-730. After you've finished preparing the applications, make a complete copy for your records and send it the USCIS Service Center indicated on the form.

Despite your status as an asylee, be aware that your family members can be denied entry to the

U.S. if they've committed serious nonpolitical crimes, been affiliated with terrorism, or otherwise violated the provisions of the immigration law in I.N.A. § 208(b)(2), 8 U.S.C. § 1158.



CAUTION

Your children must remain unmarried and under age 21 until they enter the United States.

Warn them not to get married, or they'll ruin their chance to claim asylum and join you. Of course, turning 21 is something your children have no control over. Fortunately, a law called the Child Status Protection Act (CSPA) offers them some protection. The law says that if your child was under age 21 when you filed your Form I-589 with USCIS, he or she will still be considered 21 years of age when you file the Form I-730 and he or she comes to claim U.S. asylee status.

G. Getting a Green Card After Asylum Approval

One year after your asylum application has been approved, you and your family may apply to become permanent residents. (You can also wait more than a year, but it's safest to apply as soon as you can.) You are eligible for a green card if you:

- have remained physically in the United States for one full year after being granted asylum
- continue to be a refugee or asylee or the spouse or child of a refugee or asylee (as defined in Section A, above; if conditions in your country have improved a lot, see an attorney), and
- have not violated certain U.S. criminal laws.

If you meet these criteria, it's time to prepare and submit an application for adjustment of status, as described in Chapter 18. You can skip the sections of that chapter that discuss whether or not you're truly eligible to use the adjustment of status procedure—as an asylee, you are. You also don't need to worry about proving that you entered the

U.S. legally, like some applicants do. And unlike most other adjustment of status applicants, you need not submit an Affidavit of Support (Form I-864).

One problem you may run into, however, is that only a limited number of asylees can be granted green cards every year. That doesn't mean your green card application will be denied—but it's very likely to be delayed until the next year or later. While you wait, USCIS may interview you and review your case from time to time to see whether you're still eligible for asylum. If conditions in your home country improve, you could be removed from the United States. If not, your asylee status—and right to work—will continue until your adjustment of status (green card) application is finally approved. (However, you'll need to regularly apply for renewals of your work permit card.)

H. Revocation of Asylee Status

Beware that if your country's political situation has improved or changed so that you are no longer in danger of being persecuted, USCIS may revoke your asylee status. However, it must first notify you and then convince an asylum officer that you either:

- no longer have a well-founded fear of persecution upon your return, due to a change of conditions in your country
- were guilty of fraud in your application so that you were not eligible for asylum when it was granted, or
- have committed any of the acts that would have caused your asylum application to be denied—such as a serious felony.

I. Temporary Protected Status (TPS)

Temporary Protected Status (TPS) is a new legal category that was fashioned by the U.S. Congress to respond to situations when natural disasters, such as earthquakes, volcanic eruptions, or tidal waves occur, or when war is being waged in a foreign country. It is a form of temporary asylum or safe haven for aliens whose country is in turmoil. Congress responded with this humanitarian gesture to avoid the deportation of aliens to countries where their personal safety is threatened or in which normal living conditions are substantially disrupted. It does not, however, lead to permanent residence or a green card.

1. TPS Benefits

Temporary Protected Status offers several short-term benefits.

- **Stay of deportation.** You will not be placed in removal proceedings. If a removal case is already underway, you can claim TPS, and the proceedings will be adjourned until the end of the disruption period.
- **Work authorization.** You will receive work authorization as long as the TPS is in effect.
- **Temporary Treatment (TT).** When you file for TPS, so long as it is complete with such documentary proof as a birth certificate showing that you are a national of the designated country, you'll be granted a stay of deportation and work authorization immediately, and they won't be taken away until either the TPS designation is ended or your application is denied.

2. Who Designates the TPS Aliens

The U.S. attorney general, working through USCIS, will designate the countries whose nationals deserve Temporary Protected Status.

The following situations may give rise to this designation:

- ongoing armed conflict and civil war that pose a serious threat to the lives and personal safety of deported aliens who are nationals of that country
- earthquakes, floods, droughts, epidemics, or other environmental disasters, resulting in a substantial disruption of living conditions and an inability to handle the return of its nationals, in a foreign country that has requested a TPS designation, or
- extraordinary and temporary conditions in the foreign country preventing its nationals in the United States from returning safely to their country.

3. Period of Protected Status

The attorney general will designate the initial period of protection as not less than six months or more than 18 months. Sixty days before the end of the period, the attorney general will review the conditions of the foreign country to determine whether to end the TPS, or to extend it for a period of six, 12, or 18 months.

The termination or the extension will be published in the *Federal Register*. Termination will be effective 60 days after publication.

4. Who Qualifies for TPS

Nationals or native-born citizens of the designated foreign countries may apply for Temporary Protected Status if they:

- have been physically present in the United States continuously since the date of the designation
- have continuously resided in the United States since a certain date
- register for TPS during a registration period of not less than 180 days, and
- pay the filing fee.

TPS-Designated Countries

At the time this book went to print, citizens from the countries on the list below could apply for TPS. However, this list changes rapidly, so keep your eyes on the news and USCIS website at www.uscis.gov.

Burundi (through May 1, 2009)
 El Salvador (through March 9, 2009)
 Honduras (through January 5, 2009)
 Liberia (through March 31, 2009)
 Nicaragua (through January 5, 2009)
 Somalia (through September 17, 2009)
 Sudan (through November 2, 2008)

5. Who Is Not Eligible for TPS

TPS is not available to nationals or native-born citizens of a designated foreign country who are outside the United States. In addition, even if you are already in the United States, your application for TPS will be denied if you:

- have been convicted of any felony, or at least two misdemeanors, in the United States
- have ordered, incited, assisted, or participated in persecuting any person
- have committed a serious nonpolitical crime outside the United States, or
- are regarded as a terrorist or danger to the security of the United States.

6. No Departure From the U.S. Allowed

If a person who has been granted TPS leaves the United States without getting advance permission from USCIS, the agency may treat the TPS status as having been abandoned.

Brief, casual, and innocent absences from the United States—a few hours or days—shall not be considered as failure to be physically present

in the United States. For humanitarian reasons, USCIS recognizes emergency and extenuating circumstances, and may give advance parole or permission to depart for a brief and temporary trip without affecting the TPS.

7. How to Apply for TPS

The following forms should be filed with the USCIS local office nearest the applicant's place of residence. Most applicants will file these with the USCIS. However, citizens of El Salvador, Honduras, and Nicaragua must mail their applications to either a service center or lockbox (see the USCIS website at www.uscis.gov and the appendix for contact details).

- Form I-821, Application for Temporary Protected Status. The filing fee is \$50, plus an additional \$80 for fingerprinting if you are age 14 or older.
- If you plan to work, Form I-765, Employment Authorization Application, with filing fee of \$340. Work authorization, effective until TPS is ended, is granted for the TPS period or one year, whichever is shorter. The fee must be paid each time.
- Copies of documents showing your physical presence during the period designated: passport used in entering the United States, such as Form I-94 (Record of Departure), rent receipts, school records, hospital records, pay stubs, banking records, employment records, and affidavits of responsible members of your community (such as a religious officer, school director, or employer).
- Two kinds of documents showing personal identity and nationality: birth certificate, a passport, driver's license, employment ID, or school ID.
- Two photographs, passport style.

8. Termination of TPS

After the U.S. government decides that the situation in the foreign country has improved and there is no longer any reason to retain the Temporary Protective Status for nationals of that country, it will announce that the TPS designation will be lifted. Your work authorization will continue until the TPS expiration date.

If you do not have any other legal right to be in the United States, you are expected to leave at that time. However, it does not appear that the immigration authorities will make special efforts to deport people at the end of the TPS period—though there are no guarantees.

J. Deferred Enforced Departure (DED)

Another benefit that may be available for people from countries that have political or civil conflicts is known as Deferred Enforced Departure (DED). This is a temporary form of relief that allows designated individuals to work and stay in the United States for a certain period of time, during which the authorities will not try to deport them.

At the time this book went to print, only Liberia was designated under the DED program.

Certain people are ineligible for DED, including those who have committed certain crimes, persecuted others, or have been previously deported, excluded, or removed from the United States.

If you are already in removal proceedings, you may ask the immigration judge to defer action on your case based on DED. If your case is already up on appeal after a decision by an immigration judge at the Board of Immigration Appeals, you should receive notice automatically about the administrative or temporary closure of your proceeding.

To qualify for DED as a Liberian, you must have had TPS up to September 30, 2007. You don't need to submit any forms; your TPS-related EAD (work permit) is automatically extended through March 31, 2009.

Application for Asylum and for Withholding of Removal, Sample Form I-589 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

U.S. Department of Justice
Executive Office for Immigration Review

OMB No. 1615-0067; Expires 12/31/07

I-589, Application for Asylum and for Withholding of Removal

START HERE - Please type or print in black ink. See the Instructions for information about eligibility and how to complete and file this application. There is NO filing fee for this application.

NOTE: Please check this box if you also want to apply for withholding of removal under the Convention Against Torture. ☒

Part A. I. Information about you.

1. Alien Registration Number(s) (A#s) (If any) A54750557		2. U.S. Social Security Number (If any)	
3. Complete Last Name Romero	4. First Name Luiz	5. Middle Name Manuel	
6. What other names have you used? (Include maiden name and aliases.) None			
7. Residence in the U.S. (Where you physically reside.)		Telephone Number () 510-555-2222	
Street Number and Name 156 Arbol Lane		Apt. Number	
City Richmond	State CA	Zip Code 94666	
8. Mailing Address in the U.S. (If different than the address in No. 7) (same as above)		Telephone Number ()	
In Care Of (If applicable):		Apt. Number	
Street Number and Name		Zip Code	
City	State	Zip Code	
9. Gender: ☒ Male ☐ Female		10. Marital Status: ☐ Single ☒ Married ☐ Divorced ☐ Widowed	
11. Date of Birth (mm/dd/yyyy) 04/07/1967		12. City and Country of Birth Quetzaltenango, Guatemala	
13. Present Nationality (Citizenship) Guatemalan	14. Nationality at Birth Guatemalan	15. Race, Ethnic or Tribal Group Hispanic	16. Religion Catholic
17. Check the box, a through c, that applies: a. ☒ I have never been in Immigration Court proceedings. b. ☐ I am now in Immigration Court proceedings. c. ☐ I am not now in Immigration Court proceedings, but I have been in the past.			
18. Complete 18 a through c. a. When did you last leave your country? (mmm/dd/yyyy) <u>10/04/2005</u> b. What is your current I-94 Number, if any? <u>02654000102</u> c. Please list each entry into the U.S. beginning with your most recent entry. <i>List date (mm/dd/yyyy), place, and your status for each entry. (Attach additional sheets as needed.)</i> Date <u>10/04/2005</u> Place <u>San Francisco, CA</u> Status <u>B-2</u> Date Status Expires: <u>04/04/2007</u> Date <u>05/07/2001</u> Place <u>Los Angeles, CA</u> Status <u>B-2</u> Date _____ Place _____ Status _____			
19. What country issued your last passport or travel document? Guatemala		20. Passport # Travel Document # <u>775824</u>	
21. Expiration Date (mm/dd/yyyy) 01/01/2009			
22. What is your native language? (Include dialect, if applicable.) Spanish		23. Are you fluent in English? ☐ Yes ☒ No	
24. What other languages do you speak fluently? None			
For EOIR use only.		Action: For USCIS use only. Decision:	
Interview Date: _____		Approval Date: _____	
Asylum Officer ID#: _____		Denial Date: _____	
		Referral Date: _____	

Sample Form I-589 (page 2)

Part A. II. Information about your spouse and children.**Your spouse.** ☐ I am not married. (Skip to **Your children**, below.)

1. Alien Registration Number (A#) (If any) A54571570	2. Passport/ID Card No. (If any) 775825	3. Date of Birth (mm/dd/yyyy) 05/09/1970	4. U.S. Social Security No. (If any)
5. Complete Last Name Romero	6. First Name Maria	7. Middle Name Beatriz	8. Maiden Name Carcamo
9. Date of Marriage (mm/dd/yyyy) 11/07/1991	10. Place of Marriage Antigua, Guatemala	11. City and Country of Birth Panajachel, Guatemala	
12. Nationality (Citizenship) Guatemalan	13. Race, Ethnic or Tribal Group Hispanic	14. Gender ☐ Male ☒ Female	
15. Is this person in the U.S. ? ☒ Yes (Complete Blocks 16 to 24.) ☐ No (Specify location.)			
16. Place of last entry in the U.S. San Francisco, CA	17. Date of last entry in the U.S. (mm/dd/yyyy) 10/04/2005	18. I-94 No. (If any) 02654000103	19. Status when last admitted (Visa type, if any) B-2 visitor
20. What is your spouse's current status? B-2	21. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy) 04/04/2007	22. Is your spouse in Immigration Court proceedings? ☐ Yes ☒ No	23. If previously in the U.S., date of previous arrival (mm/dd/yyyy) None
24. If in the U.S., is your spouse to be included in this application? (Check the appropriate box.) ☒ Yes (Attach one photograph of your spouse in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No			

Your children. Please list all of your children, regardless of age, location or marital status.☒ I do not have any children. (Skip to Part A. III., **Information about your background**.)☐ I have children. Total number of children: _____.

(NOTE: Use Supplement A Form I-589 or attach additional sheets of paper and documentation if you have more than four children.)

1. Alien Registration Number (A#) (If any)	2. Passport/ID Card No. (If any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security No. (If any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic or Tribal Group	12. Gender ☐ Male ☐ Female
13. Is this child in the U.S. ? ☐ Yes (Complete Blocks 14 to 21.) ☐ No (Specify location.)			
14. Place of last entry in the U.S.	15. Date of last entry in the U.S. (mm/dd/yyyy)	16. I-94 No. (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No			

Sample Form I-589 (page 3)

Part A. II. Information about your spouse and children. (Continued.)

1. Alien Registration Number (A#) (If any)		2. Passport/ID Card No. (If any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (If any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic or Tribal Group		12. Gender ☐ Male ☐ Female	
13. Is this child in the U.S.? ☐ Yes (Complete Blocks 14 to 21.) ☐ No (Specify location.) _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. (mm/dd/yyyy)		16. I-94 No. (If any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No							

1. Alien Registration Number (A#) (If any)		2. Passport/ID Card No. (If any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (If any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic or Tribal Group		12. Gender ☐ Male ☐ Female	
13. Is this child in the U.S.? ☐ Yes (Complete Blocks 14 to 21.) ☐ No (Specify location.) _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. (mm/dd/yyyy)		16. I-94 No. (If any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No							

1. Alien Registration Number (A#) (If any)		2. Passport/ID Card No. (If any)		3. Marital Status (Married, Single, Divorced, Widowed)		4. U.S. Social Security No. (If any)	
5. Complete Last Name		6. First Name		7. Middle Name		8. Date of Birth (mm/dd/yyyy)	
9. City and Country of Birth		10. Nationality (Citizenship)		11. Race, Ethnic or Tribal Group		12. Gender ☐ Male ☐ Female	
13. Is this child in the U.S.? ☐ Yes (Complete Blocks 14 to 21.) ☐ No (Specify location.) _____							
14. Place of last entry in the U.S.		15. Date of last entry in the U.S. (mm/dd/yyyy)		16. I-94 No. (If any)		17. Status when last admitted (Visa type, if any)	
18. What is your child's current status?		19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)		20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No			
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No							

Sample Form I-589 (page 4)

Part A. III. Information about your background.

1. Please list your last address where you lived before coming to the U.S. If this is not the country where you fear persecution, also list the last address in the country where you fear persecution. (List Address, City/Town, Department, Province, or State and Country.)
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Number and Street (Provide if available)	City/Town	Department, Province or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
123 Avenida 7	Guatemala City	Guatemala City	Guatemala	11/1987	10/2005

2. Provide the following information about your residences during the past five years. List your present address first.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Number and Street	City/Town	Department, Province or State	Country	Dates	
				From (Mo/Yr)	To (Mo/Yr)
156 Arbol Lane	Richmond	California	USA	10/2005	present
123 Avenida 7	Guatemala City	Guatemala City	Guatemala	11/1987	10/2005
321 Calle de la Paz	Quetzaltenango		Guatemala	birth	11/1987

3. Provide the following information about your education, beginning with the most recent.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Name of School	Type of School	Location (Address)	Attended	
			From (Mo/Yr)	To (Mo/Yr)
San Carlos University	College	Guatemala City	09/1984	06/1988
Quetzal High School	High School	Quetzaltenango	09/1980	06/1984
Sta. Maria Academy	Elementary/Middle	Quetzaltenango	09/1972	06/1980

4. Provide the following information about your employment during the past five years. List your present employment first.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Name and Address of Employer	Your Occupation	Dates	
		From (Mo/Yr)	To (Mo/Yr)
Jose Torres Ramirez, Attorney	Legal Assistant	08/1996	10/2005

5. Provide the following information about your parents and siblings (brothers and sisters). Check the box if the person is deceased.
(NOTE: Use Supplement B, Form I-589 or additional sheets of paper, if necessary.)

Full Name	City/Town and Country of Birth	Current Location
Mother Gloria Alcala de Romero	Quetzaltenango, Guatemala	☐ Deceased Quetzaltenango, Guatemala
Father Jorge Romero	Quetzaltenango, Guatemala	☒ Deceased
Sibling Felipe Romero	Quetzaltenango, Guatemala	☒ Deceased
Sibling Laura Romero	Quetzaltenango, Guatemala	☐ Deceased Antigua, Guatemala
Sibling		☐ Deceased
Sibling		☐ Deceased

Sample Form I-589 (page 5)

Part B. Information about your application.

(NOTE: Use Supplement B, Form I-589 or attach additional sheets of paper as needed to complete your responses to the questions contained in Part B.)

When answering the following questions about your asylum or other protection claim (withholding of removal under 241(b)(3) of the INA or withholding of removal under the Convention Against Torture) you should provide a detailed and specific account of the basis of your claim to asylum or other protection. To the best of your ability, provide specific dates, places and descriptions about each event or action described. You should attach documents evidencing the general conditions in the country from which you are seeking asylum or other protection and the specific facts on which you are relying to support your claim. If this documentation is unavailable or you are not providing this documentation with your application, please explain why in your responses to the following questions.

Refer to Instructions, Part 1: Filing Instructions, Section II, "Basis of Eligibility," Parts A - D, Section V, "Completing the Form," Part B, and Section VII, "Additional Evidence That You Should Submit," for more information on completing this section of the form.

1. Why are you applying for asylum or withholding of removal under section 241(b)(3) of the INA, or for withholding of removal under the Convention Against Torture? Check the appropriate box(es) below and then provide detailed answers to questions A and B below:

I am seeking asylum or withholding of removal based on:

- | | |
|--------------------------------------|---|
| ☐ Race | ☒ Political opinion |
| ☐ Religion | ☒ Membership in a particular social group |
| ☐ Nationality | ☒ Torture Convention |

- A. Have you, your family, or close friends or colleagues ever experienced harm or mistreatment or threats in the past by anyone?

☐ No ☒ Yes

If "Yes," explain in detail:

- (1) What happened;
- (2) When the harm or mistreatment or threats occurred;
- (3) Who caused the harm or mistreatment or threats; and
- (4) Why you believe the harm or mistreatment or threats occurred.

During the months of July through September 2005, jeeps with darkened windows have been circling our office and followed me home on at least two occasions. The neighbors told me that a military officer has been asking questions about me. I received a phone call on September 4, in which an anonymous voice said "drop the Diaz case or your wife will be a widow."

- B. Do you fear harm or mistreatment if you return to your home country?

☐ No ☒ Yes

If "Yes," explain in detail:

- (1) What harm or mistreatment you fear;
- (2) Who you believe would harm or mistreat you; and
- (3) Why you believe you would or could be harmed or mistreated.

I believe that members of the Guatemalan military would torture, imprison, or kill me because of my work assisting victims of human rights abuses to gain judicial relief.

Sample Form I-589 (page 6)

Part B. Information about your application. (Continued.)

2. Have you or your family members ever been accused, charged, arrested, detained, interrogated, convicted and sentenced, or imprisoned in any country other than the United States?

☒ No ☐ Yes

If "Yes," explain the circumstances and reasons for the action.

- 3.A. Have you or your family members ever belonged to or been associated with any organizations or groups in your home country, such as, but not limited to, a political party, student group, labor union, religious organization, military or paramilitary group, civil patrol, guerrilla organization, ethnic group, human rights group, or the press or media?

☐ No ☒ Yes

If "Yes," describe for each person the level of participation, any leadership or other positions held, and the length of time you or your family members were involved in each organization or activity.

I was a member of Students United for Free Speech from 1984 to 1988. I was a member of the Legal Committee for Redress from 1999 until I left Guatemala in 2005.

- B. Do you or your family members continue to participate in any way in these organizations or groups?

☒ No ☐ Yes

If "Yes," describe for each person your or your family members' current level of participation, any leadership or other positions currently held, and the length of time you or your family members have been involved in each organization or group.

4. Are you afraid of being subjected to torture in your home country or any other country to which you may be returned?

☐ No ☒ Yes

If "Yes," explain why you are afraid and describe the nature of torture you fear, by whom, and why it would be inflicted.

Other human rights activists, including a former clerk at the office where I worked, have been questioned and tortured by members of the Guatemalan police and military, or by member of clandestine groups believed to be linked with the government. Reported methods of torture and interrogation include putting a hood filled with insecticides over the victim's head, and administering electric shock, particularly to the genital area.

Sample Form I-589 (page 7)

Part C. Additional information about your application.

(NOTE: Use Supplement B, Form I-589 or attach additional sheets of paper as needed to complete your responses to the questions contained in Part C.)

1. Have you, your spouse, your child(ren), your parents or your siblings ever applied to the U. S. Government for refugee status, asylum or withholding of removal?

☒ No ☐ Yes

If "Yes," explain the decision and what happened to any status you, your spouse, your child(ren), your parents or your siblings received as a result of that decision. Please indicate whether or not you were included in a parent or spouse's application. If so, please include your parent or spouse's A-number in your response. If you have been denied asylum by an Immigration Judge or the Board of Immigration Appeals, please describe any change(s) in conditions in your country or your own personal circumstances since the date of the denial that may affect your eligibility for asylum.

2. A. After leaving the country from which you are claiming asylum, did you or your spouse or child(ren) who are now in the United States travel through or reside in any other country before entering the United States? ☒ No ☐ Yes

- B. Have you, your spouse, your child(ren) or other family members, such as your parents or siblings, ever applied for or received any lawful status in any country other than the one from which you are now claiming asylum?

☒ No ☐ Yes

If "Yes" to either or both questions (2A and/or 2B), provide for each person the following: the name of each country and the length of stay, the person's status while there, the reasons for leaving, whether or not the person is entitled to return for lawful residence purposes, and whether the person applied for refugee status or for asylum while there, and if not, why he or she did not do so.

3. Have you, your spouse or your child(ren) ever ordered, incited, assisted or otherwise participated in causing harm or suffering to any person because of his or her race, religion, nationality, membership in a particular social group or belief in a particular political opinion?

☒ No ☐ Yes

If "Yes," describe in detail each such incident and your own, your spouse's or your child(ren)'s involvement.

Sample Form I-589 (page 8)

Part C. Additional information about your application. (Continued.)

4. After you left the country where you were harmed or fear harm, did you return to that country?

☒ No ☐ Yes

If "Yes," describe in detail the circumstances of your visit(s) (for example, the date(s) of the trip(s), the purpose(s) of the trip(s) and the length of time you remained in that country for the visit(s).)

5. Are you filing this application more than one year after your last arrival in the United States?

☒ No ☐ Yes

If "Yes," explain why you did not file within the first year after you arrived. You should be prepared to explain at your interview or hearing why you did not file your asylum application within the first year after you arrived. For guidance in answering this question, see Instructions, Part I: Filing Instructions, Section V. "Completing the Form," Part C.

6. Have you or any member of your family included in the application ever committed any crime and/or been arrested, charged, convicted and sentenced for any crimes in the United States?

☒ No ☐ Yes

If "Yes," for each instance, specify in your response: what occurred and the circumstances, dates, length of sentence received, location, the duration of the detention or imprisonment, the reason(s) for the detention or conviction, any formal charges that were lodged against you or your relatives included in your application and the reason(s) for release. Attach documents referring to these incidents, if they are available, or an explanation of why documents are not available.

Sample Form I-589 (page 9)

Part D. Your Signature.

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. Title 18, United States Code, Section 1546(a), provides in part: Whoever knowingly makes under oath, or as permitted under penalty of perjury under Section 1746 of Title 28, United States Code, knowingly subscribes as true, any false statement with respect to a material fact in any application, affidavit, or other document required by the immigration laws or regulations prescribed thereunder, or knowingly presents any such application, affidavit, or other document containing any such false statement or which fails to contain any reasonable basis in law or fact - shall be fined in accordance with this title or imprisoned for up to 25 years. I authorize the release of any information from my immigration record that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

Staple your photograph here or the photograph of the family member to be included on the extra copy of the application submitted for that person.

WARNING: Applicants who are in the United States illegally are subject to removal if their asylum or withholding claims are not granted by an asylum officer or an immigration judge. Any information provided in completing this application may be used as a basis for the institution of, or as evidence in, removal proceedings even if the application is later withdrawn. Applicants determined to have knowingly made a frivolous application for asylum will be permanently ineligible for any benefits under the Immigration and Nationality Act. You may not avoid a frivolous finding simply because someone advised you to provide false information in your asylum application. If filing with USCIS, unexcused failure to appear for an appointment to provide biometrics (such as fingerprints) and your biographical information within the time allowed may result in an asylum officer dismissing your asylum application or referring it to an immigration judge. Failure without good cause to provide DHS with biometrics or other biographical information while in removal proceedings may result in your application being found abandoned by the immigration judge. See sections 208(d)(5)(A) and 208(d)(6) of the INA and 8 CFR sections 208.10, 1208.10, 208.20, 1003.47(d) and 1208.20.

Print your complete name. Luiz Manuel Romero	Write your name in your native alphabet. n/a
---	---

Did your spouse, parent or child(ren) assist you in completing this application? ☒ No ☐ Yes (If "Yes," list the name and relationship.)

(Name)	(Relationship)	(Name)	(Relationship)
Did someone other than your spouse, parent or child(ren) prepare this application? ☒ No ☐ Yes (If "Yes," complete Part E.)			
Asylum applicants may be represented by counsel. Have you been provided with a list of persons who may be available to assist you, at little or no cost, with your asylum claim? ☐ No ☒ Yes			

Signature of Applicant (The person in Part A.I.)

[Luiz Manuel Romero]
Sign your name so it all appears within the brackets

10/03/2006
Date (mm/dd/yyyy)

Part E. Declaration of person preparing form, if other than applicant, spouse, parent or child.

I declare that I have prepared this application at the request of the person named in Part D, that the responses provided are based on all information of which I have knowledge, or which was provided to me by the applicant, and that the completed application was read to the applicant in his or her native language or a language he or she understands for verification before he or she signed the application in my presence. I am aware that the knowing placement of false information on the Form I-589 may also subject me to civil penalties under 8 U.S.C. 1324c and/or criminal penalties under 18 U.S.C. 1546(a).

Signature of Preparer		Print Complete Name of Preparer	
Daytime Telephone Number ()		Address of Preparer: Street Number and Name	
Apt. No.	City	State	Zip Code

Sample Form I-589 (page 10)

Part F. To be completed at asylum interview, if applicable.

NOTE: You will be asked to complete this Part when you appear for examination before an asylum officer of the Department of Homeland Security, U.S. Citizenship and Immigration Services (USCIS).

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered _____ to _____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of asylum officer

Part G. To be completed at removal hearing, if applicable.

NOTE: You will be asked to complete this Part when you appear before an immigration judge of the U.S. Department of Justice, Executive Office for Immigration Review (EOIR), for a hearing.

I swear (affirm) that I know the contents of this application that I am signing, including the attached documents and supplements, that they are ☐ all true or ☐ not all true to the best of my knowledge and that correction(s) numbered _____ to _____ were made by me or at my request. Furthermore, I am aware that if I am determined to have knowingly made a frivolous application for asylum I will be permanently ineligible for any benefits under the Immigration and Nationality Act and that I may not avoid a frivolous finding simply because someone advised me to provide false information in my asylum application.

Signed and sworn to before me by the above named applicant on:

Signature of Applicant

Date (mm/dd/yyyy)

Write Your Name in Your Native Alphabet

Signature of immigration judge

Sample Form I-589 (page 11)

Supplement A, Form I-589

A # (If available)		Date	
Applicant's Name		Applicant's Signature	
List all of your children, regardless of age or marital status. (NOTE: Use this form and attach additional pages and documentaton as needed, if you have more than four children.)			
1. Alien Registration Number (A#) (If any)	2. Passport/ID Card Number (If any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (If any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic or Tribal Group	12. Gender ☐ Male ☐ Female
13. Is this child in the U.S.? ☐ Yes (Complete blocks 14 to 21.) ☐ No (Specify location.) _____			
14. Place of last entry in the U.S.	15. Date of last entry in the U.S. (mm/dd/yyyy)	16. I-94 Number (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No			

1. Alien Registration Number (A#) (If any)	2. Passport/ID Card Number (If any)	3. Marital Status (Married, Single, Divorced, Widowed)	4. U.S. Social Security Number (If any)
5. Complete Last Name	6. First Name	7. Middle Name	8. Date of Birth (mm/dd/yyyy)
9. City and Country of Birth	10. Nationality (Citizenship)	11. Race, Ethnic or Tribal Group	12. Gender ☐ Male ☐ Female
13. Is this child in the U.S.? ☐ Yes (Complete blocks 14 to 21.) ☐ No (Specify location.) _____			
14. Place of last entry in the U.S.	15. Date of last entry in the U.S. (mm/dd/yyyy)	16. I-94 Number (If any)	17. Status when last admitted (Visa type, if any)
18. What is your child's current status?	19. What is the expiration date of his/her authorized stay, if any? (mm/dd/yyyy)	20. Is your child in Immigration Court proceedings? ☐ Yes ☐ No	
21. If in the U.S., is this child to be included in this application? (Check the appropriate box.) ☐ Yes (Attach one photograph of your child in the upper right corner of Page 9 on the extra copy of the application submitted for this person.) ☐ No			

Sample Form I-589 (page 12)

Supplement B, Form I-589

Additional information about your claim to asylum.

A# (If available)	Date
Applicant's Name	Applicant's Signature

NOTE: Use this as a continuation page for any additional information requested. Please copy and complete as needed.

Part

Question

Form I-589 Supplement B (Rev. 12/14/06) Y

Refugee/Asylee Relative Petition, Sample Form I-730 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No.1615-0037; Expires 08/31/07

I-730, Refugee/Asylee Relative Petition**DO NOT WRITE IN THIS BLOCK - FOR USCIS OFFICE ONLY**

Section of Law ☐ 207 (c)(2) Spouse ☐ 207 (c)(2) Child ☐ 208 (b)(3) Spouse ☐ 208 (b)(3) Child	Action Stamp 	Receipt
Reviewed For Material Support Date:	Remarks	

START HERE - Please type or print legibly in black ink.

Petitioner Status: ☐ Refugee ☐ Lawful Permanent Resident based on previous Refugee status
☒ Asylee ☐ Lawful Permanent Resident based on previous Asylee status

I am filing this petition for my: ☒ Spouse ☐ Biological Child
☐ Unmarried child under 21 years of age who is: ☐ Stepchild
☐ Adopted Child

Number of relatives I am filing for: 3 (1 of 3)

Part 1. Information about you.

Family Name (Last Name), Given Name (First Name), Middle Name
 BERA, John Paul

Address - C/O
 Street Number and Name Apt. #
 876 5th Street 14

City State or Province
 Providence RI

Country Zip/Postal Code Gender:
 USA 02901 a. ☒ Male
 b. ☐ Female

Date of Birth (mm/dd/yyyy) Country of Birth
 12/15/1970 Nigeria

Country of Citizenship/Nationality Telephone Number Country and City/Area Code
 Nigeria 401-555-2121

Alien Registration Number(A#) U.S. Social Security # (If applicable.)
 A12345678 123-45-6789

Other Name(s) Used (Including maiden name)
 None

State If Married, Date (mm/dd/yyyy) and Place of Present Marriage:
 07/18/1992, Lagos, Nigeria

State If Previously Married, Name(s) of Prior Spouse(s):
 Lola Nuapa

Date(s) Previous Marriage(s) Ended: (mm/dd/yyyy)
 03/14/1991

If Granted Refugee Status, Date (mm/dd/yyyy) and Place Admitted to the United States:
 03/20/2008, Newark, NJ

Part 2. Information about your alien relative.

Family Name (Last Name), Given Name (First Name), Middle Name
 BERA, Gladys Mary

Address - C/O
 Street Number and Name Apt. #
 17 Ozumba Mbadicue Avenue 2

City State or Province
 Lagos

Country Zip/Postal Code Gender:
 Nigeria a. ☐ Male
 b. ☒ Female

Date of Birth (mm/dd/yyyy) Country of Birth
 07/24/1972 Nigeria

Country of Citizenship/Nationality Telephone Number Country and City/Area Code
 Nigeria

Alien Registration Number (If any.) U. S. Social Security # (If any.)

Other Name(s) Used (Including maiden name)
 Gladys Mary ODEKU

State If Married, Date (mm/dd/yyyy) and Place of Present Marriage:
 07/18/1992, Lagos, Nigeria

State If Previously Married, Name(s) of Prior Spouse(s):

Date(s) Previous Marriage(s) Ended: (mm/dd/yyyy)

To Be Completed by
 Attorney or Representative, if any.
☐ Fill in box if G-28 is attached to represent the petitioner.

Volag #

Atty State License #

Sample Form I-730 (page 2)

Part 2. Information about your alien relative. (Continued.)

Name and address of your alien relative in the language written in the country where he or she now resides.

Family Name

Given Name

Middle Name

Address - C/O

Street Number and Name/Apt. #

City/State or Province

Country/Zip/Postal Code

Part 3. Processing Information.

1. Check One: a. ☐ The person named in **Part 2** is now in the United States.
- b. ☒ The person named in **Part 2** is now outside the United States. (Please indicate the location of the American Consulate or Embassy where your relative will apply for a visa.)
- American Consulate/Embassy at: Lagos, Nigeria
- City and Country

2. Is the person named in **Part 2** in deportation or removal proceedings in the United States?

- a. ☒ No
- b. ☐ Yes (Please explain below or on a separate sheet(s) of paper.)

Part 4. Signature.

*Read the information on penalties in the instructions before completing this section and sign below.
If someone helped you to prepare this petition, he or she must complete **Part 6**.*

I certify or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it, is all true and correct. I authorize the release of any information from my record which U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature

Print Name

Date

Daytime Telephone Number

John Paul Bera

John Paul Bera

03/30/2008

401-555-2121

NOTE: If you do not completely fill out this form or fail to submit the required documents listed in the instructions, your relative may not be found eligible for the requested benefit and this petition may be denied.

Part 5. Signature of person preparing form, if other than petitioner above. (Sign below.)

I declare that I prepared this petition at the request of the above person and it is based on all of the information of which I have knowledge.

Signature

Print Full Name

Date

Daytime Telephone Number

Firm Name and Address

E-Mail Address (If any.)

Military Veterans and Enlistees

A. Who Qualifies to Apply for Citizenship Without a Green Card.....	196
B. Who Qualifies for Permanent Residence.....	197
1. Veterans.....	197
2. Enlistees	197
3. Iraqi or Afghani Translators for U.S. Armed Forces.....	197
4. How to File for Permanent Residence.....	198
5. Applying for Citizenship After Getting a Green Card	198

The immigration laws recognize the patriotism and valor of aliens who have defended the U.S. Constitution by serving in the military.

Some veterans can jump directly to becoming U.S. citizens. Others have a path to a U.S. green card.

A. Who Qualifies to Apply for Citizenship Without a Green Card

If you have honorably and actively served the U.S. military in a time of war or conflict, you are exempt from all green card requirements and qualify for immediate citizenship. (See J.N.A. § 329, 8 U.S.C. § 1440.) This special benefit depends, however, on the war or conflict in which you fought under the U.S. Armed Forces. It includes:

- World War I.
- World War II, specifically between September 1, 1939 and December 31, 1946; a special provision allowed Filipino war veterans to file applications for citizenship until February 3, 2001.
- The Korean War, specifically between June 25, 1950, and July 1, 1955.
- The Vietnam War, specifically between February 28, 1961 and October 15, 1978.
- The Persian Gulf Conflict, specifically between August 2, 1990 and April 11, 1991.
- The “War on Terror” (also called “Operation Enduring Freedom”), which began on September 11, 2001 and will end on a date to be determined by the U.S. president.

It also depends on where you were when you enlisted. Your enlistment, reenlistment, extension of enlistment, or induction must have been in the United States, the Canal Zone, American Samoa, or Swains Island, or on board a public vessel owned or operated by the U.S. for noncommercial service.

You’ll need to submit an application for naturalization in order to become a citizen. Your application will consist of Form N-400, Application for Naturalization; Form N-426, Request for Certification of Military or Naval Service (certified by the military); and Form G-325B, Biographic Information. However, you’ll be able to take advantage of streamlined application procedures, and will not have to pay a fee. Your military installation should have a designated point of contact to help you with your application.

You’ll ultimately need to attend an interview and pass a test of your knowledge of the English language and U.S. civics and government. But you won’t have to worry about many of the other citizenship requirements, including your age and your period of residence within the United States.

If you’re eventually separated from the Armed Forces under other-than-honorable conditions before you’ve served honorably for a total of five years, your citizenship can be revoked (taken away).

Immigrant Story: Major Diaz Becomes a U.S. Citizen

Reynaldo Diaz came to the U.S. from Mexico as a four-year-old, with his family. A cousin helped smuggle them across the border near San Diego. After completing high school in the U.S., Reynaldo decided to join the U.S. Army. He was sent to serve in Iraq, where he received many awards and commendations.

As soon as Reynaldo learns of the law permitting him to apply for citizenship, he talks to a superior officer, who helps him fill out the paperwork. Reynaldo attends his naturalization interview while at home in Kansas on leave, and passes the test easily.

As a U.S. citizen, he can now petition for residency for his parents, brothers, and sisters.

B. Who Qualifies for Permanent Residence

If you were outside the U.S. when you enlisted in the military, or for other reasons don't qualify for immediate U.S. citizenship, you may still be able to apply for a U.S. green card, under the employment-based classification of "special immigrant."

The spouse and minor children under 21 years of age who are joining or accompanying the veteran or enlistee are also entitled to immigrant visas.

In order to have enlisted outside the U.S., you must be in a country that has a treaty with the United States allowing this.



RESOURCE

You can call for advice. Members of the U.S. military and their families stationed around the world can call USCIS for help with immigration services and benefits by using a dedicated, toll-free telephone help line, at 877-CIS-4MIL (877-247-4645).

1. Veterans

An alien veteran of the U.S. Armed Forces can apply for permanent residence if he or she:

- has served honorably
- has served on active duty
- has served after October 15, 1978
- is recommended for a special immigrant visa by the U.S. Armed Forces or Navy officer under whom he or she serves
- originally enlisted outside the United States
- has served for an aggregate of 12 years, and
- was honorably discharged when separated from the service.

2. Enlistees

An alien enlistee in the U.S. Armed Forces can apply for permanent residence if he or she:

- originally enlisted outside the United States for six years
- is on active duty when applying for adjustment of status under this law
- has reenlisted for another six years, giving a total of 12 years active duty service, and
- is recommended for a special immigrant visa by the U.S. Armed Forces or Navy officer under whom he or she serves.

A Break for Illegal Workers

Because of this special law for alien members of the U.S. Armed Forces, the Act allows the applicant—and his or her spouse and children—to get permanent residence even if they may have worked illegally in the United States.

3. Iraqi or Afghani Translators for U.S. Armed Forces

You may also apply for a U.S. green card if you are a national of Iraq or Afghanistan and you:

- worked directly with the U.S. Armed Forces as a translator for at least 12 months
- received a letter of recommendation from a general or flag officer in your unit, and
- have passed background checks and screening.

Your application process will be similar to the one described below, except that you'll need to provide documents proving the above three things (instead of the certifications required of other members of the military). Also, you must file Form I-360 with the USCIS Nebraska Service Center to start the process; you can't combine it with an adjustment of status application even if you're in the United States.

4. How to File for Permanent Residence

The following forms must be completed and filed, along with a filing fee of \$375 for the application and \$80 for fingerprints (totalling \$455) in money order or certified check made payable to U.S.

Department of Homeland Security:

- ☐ Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant (see sample at the end of this chapter)
- ☐ Form N-426, Request for Certification for Military or Naval Service
- ☐ Form G-325A/G-325B, Biographic Information
- ☐ certification of past active duty status of 12 years for the veteran, or certified proof of reenlistment after six years of active duty service for the enlistee, issued by an authorized Armed Forces official, and
- ☐ your birth certificate to show that you are a national of the country that has an agreement with the United States allowing the enlistment of its nationals in the U.S. Armed Forces.

These papers have to be filed with either:

- ☐ the USCIS office having jurisdiction over the veteran or enlistee's current residence or intended place of residence in the United States, or
- ☐ the overseas USCIS office having jurisdiction over the residence abroad.

If you are in the U.S., you may apply directly for adjustment of status (see Chapter 18), and so may your spouse and your children under 21 years of age. Form I-360 and accompanying materials should be included with the rest of the adjustment of status application.

If your spouse and children are outside the United States, you may file Form I-824, Application for Action on an Approved Application or Petition, to be sent to the U.S. consulate where they will apply for immigrant visas as derivative relatives of a special immigrant.



CAUTION

USCIS will automatically revoke the petition and bar the enlistee from getting a green card if he or she:

- fails to complete the period of reenlistment, or
- receives other than an honorable discharge.

The enlistee's spouse and children will also be barred from getting green cards. If any of them already have green cards, USCIS will begin proceedings to have them taken away.

5. Applying for Citizenship After Getting a Green Card

If you got your green card as a veteran or enlistee, you're only a few short steps away from being eligible for U.S. citizenship. Although most people must wait five years after getting their green card, you are immediately able to apply for citizenship.

Servicepeople who got their green cards in other ways than through their military service can apply for citizenship as soon as they've served honorably for one year; it doesn't matter how long they've had the green card for—one day is enough. However, if they've been discharged, the discharge must have been honorable, and they must apply for citizenship within six months of the discharge date.

To file for naturalization, you must file the following forms and documents with USCIS, together with a \$595 filing fee and \$80 for fingerprints (a total of \$675):

- ☐ Form N-400, Application for Naturalization
- ☐ Form N-426, Request for Certification for Military or Naval Service
- ☐ a copy of your green card
- ☐ Form G-325A/G-325B, Biographic Information, and
- ☐ two photographs.

**RESOURCE**

Want complete information on the application process for U.S. citizenship, including special exceptions applying to members of the military? See [*Becoming a U.S. Citizen: A Guide to the Law, Exam & Interview*](#), by Ilona Bray (Nolo).

Petition for Amerasian, Widow(er), or Special Immigrant, Sample Form I-360 (page 1)

OMB No. 1615-0020; Expires 07/31/07

Department of Homeland Security
U.S. Citizenship and Immigration Services

**I-360, Petition for Amerasian,
Widow(er) or Special Immigrant**

START HERE - Please type or print in black ink.**Part 1. Information about person or organization filing**

this petition. (Individuals should use the top name line; organizations should use the second line.) If you are a self-petitioning spouse or child and do not want USCIS to send notices about this petition to your home, you may show an alternate mailing address here. If you are filing for yourself and do not want to use an alternate mailing address, skip to part 2.

Family Name ZAPATO	Given Name Dante	Middle Name Diego
Company or Organization Name		
Address - C/O		
Street Number and Name 122 Jupiter St.		Apt. # 3
City Makati	State or Province Metro Manila	
Country Philippines	Zip/Postal Code	
U.S. Social Security # 123-45-6767	A # None	IRS Tax # (if any) None

Part 2. Classification Requested (check one):

- a. ☐ Amerasian
b. ☐ Widow(er) of a U.S. citizen who died within the past two (2) years
c. ☐ Special Immigrant Juvenile
d. ☐ Special Immigrant Religious Worker
e. ☐ Special Immigrant based on employment with the Panama Canal Company, Canal Zone Government or U.S. Government in the Canal Zone
f. ☐ Special Immigrant Physician
g. ☐ Special Immigrant International Organization Employee or family member
h. ☒ Special Immigrant Armed Forces Member
i. ☐ Self-Petitioning Spouse of Abusive U.S. Citizen or Lawful Permanent Resident
j. ☐ Self-Petitioning Child of Abusive U.S. Citizen or Lawful Permanent Resident
k. ☐ Other, explain: _____

Part 3. Information about the person this petition is for.

Family Name ZAPATO	Given Name Dante	Middle Name Diego
Address - C/O		
Street Number and Name 122 Jupiter St.		Apt. # 3
City Makati	State or Province Metro Manila	
Country Philippines	Zip/Postal Code	
Date of Birth (mm/dd/yyyy) 04/06/1962	Country of Birth Philippines	
U.S. Social Security # 123-45-6767	A # (if any) none	
Marital Status: ☐ Single ☒ Married ☐ Divorced ☐ Widowed		
Complete the items below if this person is in the United States:		
Date of Arrival (mm/dd/yyyy)	I-94#	
Current Nonimmigrant Status	Expires on (mm/dd/yyyy)	

For USCIS Use Only

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
☐ Petitioner/ Applicant ☐ Interviewed Beneficiary Interviewed	
☐ I-485 Filed Concurrently ☐ Bene "A" File Reviewed	
Classification	
Consulate	
Priority Date	
Remarks:	
Action Block	
To Be Completed by ☐ Attorney or Representative, if any Fill in box if G-28 is attached to represent the applicant	
VOLAG#	
ATTY State License #	

Sample Form I-360 (page 2)

Part 4. Processing Information.

Below give information on U.S. Consulate you want notified if this petition is approved and if any requested adjustment of status cannot be granted.

American Consulate: City Manila	Country Philippines
------------------------------------	------------------------

If you gave a United States address in **Part 3**, print the person's foreign address below. If his or her native alphabet does not use Roman letters, print his or her name and foreign address in the native alphabet.

Name	Address
------	---------

Gender of the person this petition is for. ☒ Male ☐ Female

Are you filing any other petitions or applications with this one? ☒ No ☐ Yes (How many? _____)

Is the person this petition is for in deportation or removal proceedings? ☒ No ☐ Yes (Explain on a separate sheet of paper)

Has the person this petition is for ever worked in the U.S. without permission? ☒ No ☐ Yes (Explain on a separate sheet of paper)

Is an application for adjustment of status attached to this petition? ☒ No ☐ Yes

Part 5. Complete only if filing for an Amerasian.**Section A. Information about the mother of the Amerasian**

Family Name	Given Name	Middle Name
-------------	------------	-------------

Living? ☐ No (Give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Address

Section B. Information about the father of the Amerasian: If possible, attach a notarized statement from the father regarding parentage. Explain on separate paper any question you cannot fully answer in the space provided on this form.

Family Name	Given Name	Middle Name
-------------	------------	-------------

Date of Birth (mm/dd/yyyy)	Country of Birth
-------------------------------	------------------

Living? ☐ No (give date of death _____) ☐ Yes (complete address line below) ☐ Unknown (attach a full explanation)

Home Address

Home Phone # ()	Work Phone # ()
------------------	------------------

At the time the Amerasian was conceived:

The father was in the military (indicate branch of service below - and give service number here): _____

☐ Army ☐ Air Force ☐ Navy ☐ Marine Corps ☐ Coast Guard

☐ The father was a civilian employed abroad. Attach a list of names and addresses of organizations which employed him at that time.

☐ The father was not in the military, and was not a civilian employed abroad. (Attach a full explanation of the circumstances.)

Part 6. Complete only if filing for a Special Immigrant Juvenile Court Dependent.**Section A. Information about the Juvenile**

List any other names used.

Answer the following questions regarding the person this petition is for. If you answer "No," explain on a separate sheet of paper.

Is he or she still dependent upon the juvenile court or still legally committed to or under the custody of an agency or department of a state? ☐ No ☐ Yes

Does he or she continue to be eligible for long term foster care? ☐ No ☐ Yes

Sample Form I-360 (page 3)

Part 7. Complete only if filing as a Widow/Widower, a Self-petitioning Spouse of an Abuser, or as a Self-petitioning Child of an Abuser.**Section A. Information about the U.S. citizen husband or wife who died or about the U.S. citizen or lawful permanent resident abuser.**

Family Name		Given Name	Middle Name
Date of Birth (mm/dd/yyyy)	Country of Birth	Date of Death (mm/dd/yyyy)	
He or she is now, or was at time of death a (check one):			
☐ U.S. citizen born in the United States.		☐ U.S. citizen through Naturalization (Show A #) _____	
☐ U.S. citizen born abroad to U.S. citizen parents.		☐ U.S. lawful permanent resident (Show A #) _____	
☐ Other, explain _____			

Section B. Additional Information about you.

How many times have you been married?	How many times was the person in Section A married?	Give the date and place where you and the person in Section A were married. (If you are a self-petitioning child, write: "N/A")
When did you live with the person named in Section A ? From (Month/Year) _____ until (Month/Year) _____		
If you are filing as a widow/widower, were you legally separated at the time of the U.S. citizen's death? ☐ No ☐ Yes, (attach explanation).		
Give the last address at which you lived together with the person named in Section A , and show the last date that you lived together with that person at that address:		

If you are filing as a self-petitioning spouse, have any of your children filed separate self-petitions? ☐ No ☐ Yes (show child(ren)'s full names):

Part 8. Information about the spouse and children of the person this petition is for.

A widow/widower or a self-petitioning spouse of an abusive citizen or lawful permanent resident should also list the children of the deceased spouse or of the abuser.

A. Family Name ZAPATO	Given Name Isabella	Middle Name Aday	Date of Birth (mm/dd/yyyy) 07/12/1965
Country of Birth Philippines	Relationship ☒ Spouse ☐ Child	A # None	
B. Family Name ZAPATO	Given Name Ricardo	Middle Name Jesus	Date of Birth (mm/dd/yyyy) 06/12/1990
Country of Birth Philippines	Relationship ☒ Child	A # None	
C. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child	A #	
D. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child	A #	
E. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child	A #	
F. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child	A #	

Sample Form I-360 (page 4)

Part 8. Information about the spouse and children of the person this petition is for. (Continued.)

G. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #
H. Family Name	Given Name	Middle Name	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship ☐ Child		A #

Part 9. Signature.

Read the information on penalties in the instructions before completing this part. If you are going to file this petition at a USCIS office in the United States, sign below. If you are going to file it at a U.S. consulate or USCIS office overseas, sign in front of a USCIS or consular official.

I certify, or, if outside the United States, I swear or affirm, under penalty of perjury under the laws of the United States of America, that this petition and the evidence submitted with it is all true and correct. If filing this on behalf of an organization, I certify that I am empowered to do so by that organization. I authorize the release of any information from my records, or from the petitioning organization's records, that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit being sought.

Signature		Date
Signature of USCIS or Consular Official	Print Name	Date

NOTE: If you do not completely fill out this petition or fail to submit required documents listed in the instructions, the person(s) filed for may not be found eligible for a requested benefit and the petition may be denied.

Part 10. Signature of person preparing form, if other than above. (Sign below.)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date
Firm Name and Address		

Registry: For Those in the U.S. Since 1972

A. How You Got Here Is Irrelevant.....	206
B. Short Absences Allowed.....	206
C. How to File	206
D. Additional Documentation Required	206
E. Approval of Registry.....	207

If you are one of the few people who, for one reason or another, did not take advantage of the amnesty opportunities in the 1980s, and if you have been living continuously in the United States since January 1, 1972, you have one final avenue available to get a green card. It is called “registry.”



TIP

The 1972 date may change. Congress sometimes talks about moving the January 1, 1972 eligibility date forward. Keep your eye on Nolo’s website (www.nolo.com) for updates.

A. How You Got Here Is Irrelevant

You can apply for registry no matter how you entered the United States and no matter what your current immigration status. For example, it doesn’t matter that you crossed the border from Mexico, or that you came as a tourist for the World’s Fair and stayed longer than your visa allowed, or that you were a transit passenger on your way to London. You won’t be barred from registering if you cannot find your passport showing your date of entry, or if USCIS cannot find its own records of your entry.

Although you normally would be denied a green card if you entered the U.S. without inspection by a border official, or if you were a transit passenger or a stowaway, this application is special. In a sense, you are being rewarded for having been able to stay for so long without getting in trouble with the U.S. government.

B. Short Absences Allowed

If you went for a short trip across the Mexican border or took a month’s vacation in your home country, your departure will probably not be considered an interruption of your required “continuous residence” in the United States. Such absence

must be “brief, casual, and innocent.” This means that you must have done nothing either before or during your absence to show that you intended to abandon your residence in the United States.

Of course, if you quit your job, gave up the lease on your apartment, were fêted at good-bye parties, stopped paying your bills, and left the United States with all your belongings, your departure is no longer casual or innocent, however brief it may have been. If there is enough evidence that you intended to leave permanently, USCIS is likely to deny your registry application because you interrupted your continuous residence in the United States.



CAUTION

Medical personnel beware. Foreign medical graduates, including those who have come to the United States on a J-1 visa and who must fulfill the two-year home country residence requirement, may encounter resistance from USCIS in applying for registry. If you are in this situation, see a lawyer before proceeding.

C. How to File

There is no immigration form specifically for registry. To file, you must complete Form I-485, Application to Register Permanent Residence or Adjust Status (as explained in detail in Chapter 18), and attach the documents described below.

D. Additional Documentation Required

Registry is basically a paper chase. Simply saying that you have lived in the United States since January 1, 1972—without providing any documents to substantiate your testimony and those of your witnesses—is useless. To prove your continuous residence in the United States, you must submit as many of the following documents

as possible with your adjustment of status application:

- ☐ your passport and Form I-94, which shows your date of arrival into the United States
- ☐ any certificate issued by the government showing birth, death, or marriage of any member of your immediate family in the United States
- ☐ any government-issued license, such as a driver's license, business license, fishing license, car license, or professional license
- ☐ lease to your apartment and business, rent receipts, or, if you owned your own home, title to your home, mortgage contract, and deed of sale
- ☐ bills showing use of gas and electricity, telephone, and other utilities for each of your home addresses during the years you have been living in the United States
- ☐ bank statements, bank book, deposit box agreement, or credit union savings account
- ☐ pay stubs, job identification card, union membership, W-2 forms, letters of recommendation from previous employers, daily attendance sheets, and job memos addressed to you
- ☐ subscriptions to magazines and newspapers or cable and Internet service
- ☐ proof of membership in health or private clubs, churches, or social organizations
- ☐ any photos showing you at events that indicate precise dates, such as marriage or religious ceremonies, with invitations showing when and where they occurred
- ☐ medical and dental records
- ☐ credit card statements or statements from credit institutions showing payment of longstanding debts, such as car, student, and vacation loans
- ☐ letters addressed to you with clear postmarks, and
- ☐ written statements from relatives, friends, employers, a pastor or a priest, a school officer, or a police precinct attesting to the fact that you have lived continuously in the United States since January 1, 1972.

E. Approval of Registry

If you have concrete evidence that you have been living in the United States all these years, USCIS will grant your application. You will be registered in USCIS records as having entered the United States as a permanent resident on January 1, 1972. That means you may be immediately eligible to apply for U.S. citizenship.

If you are unable to convince USCIS of your long stay and it decides to start removal proceedings against you, you may wish to avail yourself of cancellation of removal relief. (See Chapter 17.) ●

Cancellation of Removal:

Do Ten Illegal Years Equal One Green Card?

A. Applying in Court Proceedings.....	210
B. Who Qualifies for Cancellation.....	210
C. Who Is Not Eligible for Cancellation.....	210
D. Preparing a Convincing Case.....	211
1. Proof of Good Moral Character	211
2. Proof That You Stayed in the U.S. Ten Years.....	212
3. Proof of Hardship.....	212
E. How to File	214
F. Approving Your Application	215
G. Additional Forms of Cancellation of Removal	215
1. Permanent Residents.....	215
2. Abused Spouse or Child.....	215

Immigration law does provide a green card as a form of relief from removal (deportation) to a person who has been in the United States for more than ten years. However, the process is long and arduous, and can normally be started only if you're already in immigration court proceedings, facing removal from the United States. This relief is called "cancellation of removal," formerly known as "suspension of deportation." When granted, an alien immediately becomes a lawful permanent resident—and receives a green card soon after the court hearing.

This area of immigration law has changed drastically in recent years. The rules controlling who qualifies have become much tougher since Congress passed changes in 1996. Some people can still qualify under the former, more flexible rules; others will qualify only if they meet the more restrictive rules passed more recently.

A. Applying in Court Proceedings

You cannot file an application to begin cancellation of removal directly with USCIS, as you can with other immigration applications. This process is available only when you are in Immigration Court, under removal proceedings. (The only exception to this rule is for people who qualify for benefits under the Nicaraguan Adjustment and Central American Relief Act.)

Being in removal proceedings means that USCIS has learned of your illegal status and has served you with a summons called a Notice to Appear (which used to be called an Order to Show Cause). The notice is a formal order giving you the time, date, and place to appear for a hearing on whether or not you should be deported.

If USCIS has not started removal proceedings against you, your sole possibility is to turn yourself in to USCIS—and it may then start removal

proceedings against you. But you should not do this before consulting an experienced immigration attorney. The attorney can help evaluate whether you qualify for relief and assess the chances that USCIS is likely to cooperate with you. More often, USCIS just lets your application sit in their files for years and years, perhaps waiting for the laws to turn against you.

B. Who Qualifies for Cancellation

If you have actually been in the United States for ten years and you are of good moral character, and your deportation would cause hardship to your U.S. citizen and permanent resident family members, there is a chance that your application for cancellation of removal will be granted.

If you were present in the United States for only seven years but USCIS issued your Order to Show Cause after you accumulated those seven years, you may qualify for the old suspension of deportation which didn't require you to show hardship to your relatives.



SEE AN EXPERT

It is very risky to ask to be placed in removal proceedings solely to request cancellation. If you are contemplating turning yourself in to USCIS, discuss your situation first with an immigration attorney who specializes in cancellation issues or with an immigration law clinic or a group that specializes in counseling on immigration matters.

C. Who Is Not Eligible for Cancellation

A number of people cannot apply for cancellation of removal. They include:

- aliens who entered the United States as crewmen after June 30, 1964

- J-1 visa holders who have not fulfilled a two-year home country residency requirement if they are required to do so, and those who came to the U.S. to receive graduate medical education or training
- those who belong to certain categories of inadmissible aliens, including those who the U.S. government believes are coming to the U.S. to engage in espionage, unlawful activities to overturn the U.S. government, or terrorist activities, and those who have been members of totalitarian or some communist parties
- people who are deportable for offenses involving national security, espionage, or terrorism
- people who have participated in persecuting others
- certain people previously given relief from removal or deportation
- people who have been convicted of certain crimes involving morally bad conduct or illegal drugs
- people convicted of a crime involving morally bad conduct in the five years after being admitted to the U.S. if the crime is punishable by a sentence of one year or more
- people who have been convicted of certain offenses involving failure to comply with alien registration or change of address requirements, or certain offenses involving document fraud, and
- people convicted of an aggravated felony. This includes murder, rape, sexual abuse of a minor, illegal trafficking in drugs or firearms, money laundering, crimes of violence, theft, or burglary—or other offenses with possible prison terms of one year or more. If you have been convicted of a crime, get advice from an experienced attorney.

D. Preparing a Convincing Case

If you decide that your best approach is to file for cancellation of removal, know that you will have some difficult times ahead. Your first task will be to explain your situation to a lawyer—and convince him or her that you are eligible. In making your case, you must have strong evidence of several things. Before you consult with a lawyer, try to collect as many of the following documented proofs as possible. (See Chapter 25 for advice on finding a good lawyer.)

1. Proof of Good Moral Character

You must show that you've been a person of good moral character for at least the last ten years. You may be able to secure a certificate of good conduct from your local police station. This certificate will attest that, according to computer records, you have never been in trouble with the police. Although USCIS will also send your fingerprints to the Federal Bureau of Investigation in Washington, DC, submitting your own record from the local police will help prove to the court that you are a person of good moral character.

You can also submit declarations from relatives, friends, and community members verifying that you have participated in religious institutions, volunteered at schools or other civic places, or in any other way demonstrated that you are a good person.

If you have committed any serious crime during the ten years you were in the United States, the immigration judge may find that you lack good moral character. Ten years must pass from the time you committed the crime until the time you can apply for a suspension of deportation. However, committing certain serious crimes will make you ineligible forever.

2. Proof That You Stayed in the U.S. Ten Years

You must show also that you have lived in the United States continuously for at least ten years. A copy of your passport and the I-94 (Record of Arrival and Departure) that was attached to your passport when you first arrived in the United States are the best proof of this.

In addition, copies of your apartment lease, bank statements, and income tax returns are good evidence that you have been in the United States for ten years. School and medical records, subscriptions and memberships, and statements from friends, landlords, or coworkers are also useful.

What Does “Continuous Physical Presence” Mean?

The court will consider that you have been continuously present in the U.S. even if you departed from the country, as long as your absences did not exceed more than 90 days per trip or 180 days total. There are exceptions for individuals who served honorably in the Armed Forces for at least two years. Also, the time that can be used toward the ten-year presence period will be cut short if you commit an act that makes you deportable or inadmissible, or if USCIS issues you a Notice to Appear.

3. Proof of Hardship

You must convince the court that if you are deported from the United States, it would cause “exceptional and extremely unusual hardship” to your spouse, child, or parent who is a U.S. citizen or a permanent resident. (The law in effect before 1996 allowed an individual to qualify by showing extreme hardship to himself or herself as well as to one of those family members, but this no longer works.)

Of course, if your spouse, parent, or adult child (21 or over) is a U.S. citizen, you qualify as a candidate for an immigrant visa as an immediate relative or as a family preference beneficiary (see Chapter 4). The relief of cancellation of removal is often a delaying tactic that your lawyer will resort to when, for some reason, you cannot immediately obtain your green card through any one of those immediate relatives.

Because cancellation of removal depends almost completely on the discretion of the judge, you can only hope for a judge who is compassionate and humane. You and your lawyer must convince the judge that leaving the United States and returning to your own country would cause exceptional and extremely unusual hardship for your family members due to any combination of personal, economic, sociocultural, and psychological reasons.

Personal reasons. The immigration court will need the birth certificate of your child, your marriage certificate, and your own birth certificate (if your parents are the U.S. citizens or permanent residents who will suffer hardship should you leave the United States).

For starters, your relatives should be prepared to testify in court about how much you mean to them, how much they depend on you, and how empty life would be for them if you were not allowed to remain in the United States. However, this sort of testimony is not enough by itself, since nearly every family would face similar pain. The judge wants to see that the hardship your family would face is “exceptional and extremely unusual.”

If your American-born children are under 14, the judge will normally not ask to hear their testimony. However, the testimony of such young children, detailing their affection for you and the hardships they would endure if they accompanied you to your native country—problems with language, problems being uprooted from friends and schools—could strengthen your case.

Although testimony by your young children that, as Americans, they would rather stay in the United

States with their grandparents or with a foster family than leave for a country they don't know could be hurtful for you to hear, such testimony would be further evidence that your deportation would cause them hardship.

Proof that any illness for which you or a family member is being treated in the United States, and evidence that the same treatment or medicine is either lacking or too expensive in your own country should also be given to the judge, supported by letters from doctors and pharmacists in the United States and the foreign country.

Provided they are either U.S. citizens or permanent residents, more distant relatives—including the grandparents or the biological parents of your child, their aunts, uncles, or cousins, or your own brothers and sisters—may all testify that your departure would also be an extreme hardship to them and to the family in general.

If you have a boyfriend or girlfriend who is married to somebody else, it is not recommended that he or she testify either on your behalf, or on behalf of the child he or she had with you. Although adultery has been repealed from immigration law as proof of the lack of good moral character, many judges will not look with favor upon such situations.

Economic reasons. Although you are probably earning much more in the United States than you would earn in your own country, economic reasons are the least persuasive arguments against deportation. Economic hardship by itself has never been considered by the immigration court as sufficient reason to cancel deportation.

If you are receiving welfare, government subsidies, or any form of public assistance, you may have an even more difficult time receiving mercy from the judge. A judge is unlikely to grant you permission to stay in the United States permanently if you may be seen as a burden to the government.

Proof of regular and continuous employment is very important. Letters from your employers, past and present, detailing your employment history and your value as an employee, your most current pay stubs, and evidence of your work product, in the form of photos or newspaper articles, are all useful in demonstrating your contribution to the economic life of the nation.

You should have filed income tax returns for the past ten years, so submit copies as proof. These will show that, except for your illegal immigration status, you have been law-abiding. If you have not filed any tax returns because you do not have a Social Security number or because you have always been paid in cash, you should consult a tax expert at once. You may have to pay back taxes.

If you are in business for yourself, submit a financial statement from an accountant to the court, along with incorporation papers showing you as the major or only stockholder. Also provide photos of your business in operation, a letter from your bank giving your account history and the average balance of your business account, and any savings, stocks, and bonds certificates. Letters from your business partners and testimony in court explaining how the business would be affected if you were forced to leave it should also be presented during the hearing.

If you have invested in real estate, present proof of ownership, mortgage papers, and a letter from a real estate broker concerning how much your property would be worth if sold in the present market and how much financial loss this would cause you.

Obtain a copy of your credit history from any of the national companies such as Experian, TransUnion, or Equifax whose credit reports are consulted by banks. This will prove that you have no judgments pending from creditors. You can get these for free once a year from each of the main three credit reporting bureaus, at www.annualcreditreport.com.

Sociocultural reasons. Convince the court that you are in good standing in your community. Present letters from your church, temple, or mosque about your active membership, from your block or village association, from the Parent-Teacher Association, from volunteer organizations, and from people you have cared for or helped. All are important to show that your life has been intimately entwined with U.S. society and that you have been a useful member of your community.

Letters from the union supervisor or from your coworkers explaining the kind of person you are and how valuable you are to them personally and in terms of work are also persuasive documents to present to the judge.

The judge will want to know whether you have any other possible forms of relief from deportation, whether you have any pending petitions submitted on your behalf by a relative or an employer, and why it is advantageous for the U.S. government to grant you permanent residence through an immediate cancellation of removal instead of waiting for the priority date of any other immigration petition that may be pending.

Psychological reasons. You will have to acquaint the judge with the social, cultural, and political situation in your country and how your family may be subjected to prejudice, bigotry, or ostracism.

If you have a child born outside of marriage, or who is of a different race or is physically handicapped, provide evidence of how such children are treated in your country. Explain how going back to your country would affect your emotional and psychological health, thereby affecting your U.S. citizen and permanent resident family members. Also explain how going back would directly affect the emotional or psychological health of any relative who is a U.S. citizen or permanent resident. Testimony from an expert witness, such as a psychiatrist or a psychologist, would bolster your case.

If you have a child who is a U.S. citizen, explain how the child's inability to speak the language of your native country and removal from relatives, friends, classmates, and school could cause the child great psychological shock.

E. How to File

You and your lawyer must submit the following documents to the immigration judge, along with a filing fee of \$100:

- ☐ Form EOIR-42A, Application for Cancellation of Removal for Permanent Residents, or Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents
- ☐ Form I-765, Application for Employment Authorization, with an additional filing fee of \$340
- ☐ Form G-325A, Biographic Information
- ☐ documentary evidence as described in Section D, above
- ☐ two color photographs taken within 30 days of submitting the application, and
- ☐ a \$80 fingerprinting fee.

Notice that we don't provide sample, filled-in forms in this chapter. That's because you'd be foolish to go into Immigration Court without the help of an attorney; and the attorney will help you fill out the forms.

The immigration judge will set a hearing date for your case—giving enough time for you and your lawyer to prepare and for USCIS to investigate your case. In the meantime, USCIS should issue you a work permit within 60 days from the date you filed the application for cancellation of removal. Be sure that USCIS has your correct address.

The hearing may not finish the first day. In fact, it may be postponed one or more times because the Immigration Court devotes only a few hours at a time to each case on its calendar. Unless you are being detained at the immigration jail, or your lawyer is particularly insistent, your case may take one or two years before it is fully heard and a decision is reached.

F. Approving Your Application

If the immigration judge approves your application for cancellation of removal, you will be granted permanent residence that day (if there are still visa numbers available for the current year).

Because you have shown that you have lived a productive and useful life in the United States all those years that you were living illegally, and that your deportation would be extremely hard for your American or lawful permanent resident spouse, child, or parents, the U.S. government wants you to remain in the United States legally.

Winning Is Not Enough

Even if an immigration judge decides to cancel your removal order, you could face a delay. Only 4,000 people each year are granted formal cancellation of removal. Immigration judges have the power to grant conditional or temporary cancellation of removal orders until the person becomes eligible. The removal proceedings will not be formally ended, and permanent residence will not be formally granted, until your waiting number is reached.

G. Additional Forms of Cancellation of Removal

There are two additional forms of cancellation of removal. One is for permanent residents (green card holders) who have become deportable or removable. The other is for people who have been subjected to extreme cruelty or battery by a spouse or parent who is a U.S. citizen or permanent resident while in the United States.

1. Permanent Residents

An immigration judge may cancel the removal of, and re-grant a green card to, a permanent resident if the person:

- has five years as a permanent resident
- has lived continuously in the U.S. for at least seven years after having been admitted in any status, and
- has not been convicted of an aggravated felony.

This relief will serve as a waiver of removal for many permanent residents who commit acts which make them deportable. See a lawyer for help with this (and Chapter 25).

2. Abused Spouse or Child

An abused spouse or child of a U.S. citizen or permanent resident may apply for cancellation of removal under different rules. In this case, the applicant must show that he or she:

- suffered physical abuse or extreme mental cruelty in the U.S. at the hands of a permanent resident or U.S. citizen who is or was the applicant's parent or spouse—or the applicant is the parent of such an abused child
- has been physically present in the U.S. for a continuous period of at least three years at the time of the application

- has had good moral character for at least the three-year period, and
- is not inadmissible due to a conviction for a crime involving moral turpitude or drugs, not inadmissible on national security or terrorism grounds or other specified grounds, and has not been convicted of an aggravated felony.

The applicant must also show that the removal would result in extreme hardship to the applicant, his or her child or parent (if the applicant is a child).

Congress added this provision as part of the Violence Against Women Act, or VAWA, so that spouses and children who are victims of abuse by their petitioning relative would have a way to obtain status if they left the household of the abuser.

Again, seek a lawyer's help with this type of application. Many nonprofits offer free or low-cost help. ●

Adjustment of Status

A. Who Is Allowed to Use the Adjustment of Status Procedure	219
1. Immediate Relatives Who Entered Legally	219
2. People Who Entered Legally and Remain Legal	220
3. People Who Qualify Under Old Laws	221
B. People Who Can't Adjust Status at All	222
C. How to File	222
1. Whether You Need to Wait for Approval of Form I-130	222
2. Adjustment of Status Forms and Documents	223
3. Submission Procedures	226
D. After You Apply	227
E. Interview and Approval	227

Are you ready for the final step toward getting a green card while you're living in the United States? By now, you should have already completed some preliminary steps, such as winning the visa lottery, receiving approval of a visa petition (Form I-130) filed by a member of your family, or having spent one year in the U.S. as an asylee or refugee. Or you should have figured out that, because of special circumstances (most likely that you're the immediate relative of a U.S. citizen and entered the U.S. legally), you don't need to get advance approval of a Form I-130 before continuing with your application. In any case, it's now your turn, as the immigrant, to file your application for a green card.

The procedure for obtaining a green card while you're in the United States is called adjustment of status. It involves submitting forms to USCIS and attending an interview at a local USCIS office. It literally means you're changing your status from that of an undocumented person or a nonimmigrant visa holder to that of permanent resident. The alternate way to obtain a green card is through what's called "consular processing" (discussed in Chapter 19), in which you correspond with and attend interviews at an overseas U.S. embassy or consulate.

If you're living or staying in the United States right now, you might prefer the convenience of applying for your green card without leaving, using the adjustment of status process. Unfortunately, it's not that easy. Many people who are eligible for green cards—because they're family members of U.S. citizens or permanent residents, or fall into other immigration categories—are nevertheless not allowed to stay in the United States to get their green card. Read on to find out the possibilities and potential problems that surround adjustment of status.

This chapter will discuss:

- who is allowed to use the adjustment of status procedure (Section A)
- who doesn't qualify, and what effect this has on their efforts to immigrate (Section B), and
- if you qualify, what forms and application procedures you'll need to use (Section C).

How Do You Decide?

If you are eligible for both adjustment of status in the United States or consular processing abroad, it is often best to choose adjustment of status because:

- you will save the expense of traveling back to your home country
- if your application to adjust your status is denied, you can remain and work in the U.S. while you appeal that decision
- if you go for consular processing and your application is denied, there is no right to appeal, and
- when adjusting status, there is no risk of being kept out for three or ten years due to past illegal stays in the United States.

Nevertheless, adjustment of status is not the best choice for everyone. For example, if you don't face any problems with the time bars, and the U.S. consulate in your home country is processing cases a lot faster than your local USCIS office, you might want to choose consular processing for the sake of a speedier green card. For example, people who are eager to start the clock ticking on their eligibility for U.S. citizenship, perhaps in order to help parents or other relatives immigrate, may want to choose consular processing.

A. Who Is Allowed to Use the Adjustment of Status Procedure

You are allowed to choose adjustment of status as your green card application method only if you fall into one of the following three categories:

- You are the immediate relative of a U.S. citizen and your last entry into the U.S. was done legally (see Section 1, below).
- Your last entry into the U.S. was done legally and you have remained in legal status ever since (see Section 2, below).
- You are “grandfathered in” under certain old laws because you had a visa petition on file before the laws changed (see Section 3, below).

In addition, you must not be inadmissible based on the “permanent bar.” This bar applies to people who lived in the United States illegally for more than a year and then left or were deported, but who returned to the United States illegally (or were caught trying to). Such people may never be allowed to get a green card. See a lawyer if you believe this bar might apply to you.

1. Immediate Relatives Who Entered Legally

If you meet the following two criteria, you are one of the lucky few allowed to use the adjustment of status procedure:

- You are the immediate relative (spouse, parent, or minor, unmarried child) of a U.S. citizen.
- Your most recent entry to the United States was done legally, most likely using a visa (such as a tourist or a student visa), a visa waiver (in which you simply showed your passport and were admitted for a 90-day tourist stay), or some other entry document like a border crossing card. There are exceptions, however: You cannot adjust under this category if you

entered as a crewman on a boat or plane, regardless of what visa you had, or you were in transit to another country without a visa (for example, changing planes in a U.S. airport).



CAUTION

Remember, this chapter discusses only procedures, not your underlying eligibility for a green card. Unless you’ve already completed the steps explained in another chapter—most likely one describing family- or lottery-based visas—you shouldn’t be in this chapter. It’s only for people with approved visa petitions or winning lottery letters who are now completing their green card application process.

EXAMPLE:

Katerina is a foreign student from Germany who has used her student visa to enter the United States many times, most recently on her return trip after summer vacation. She is engaged to marry a fellow student named Mark, a U.S. citizen. Once they’re married, Katerina will be an immediate relative, whose last entry to the U.S. was done legally. (In fact, it wouldn’t matter if she let her student visa expire before applying to adjust status, though we don’t recommend this method, since it means spending time in the U.S. illegally.) Katerina will be able to apply for her green card without leaving the U.S., using the adjustment of status procedure.

However, there’s one major, and common, difficulty for some immediate relatives: Your use of the visa or visa waiver to enter the U.S. has to have been an innocent one, merely to study, travel, or whatever it was your visa was meant for. If instead you used the visa specifically for the purpose of getting yourself to the U.S. so you could adjust status, that’s visa fraud, and will make you ineligible for a green card. Visas are meant to be used only for the limited purpose of coming to the U.S. for a temporary stay—any secret plans to stay permanently can be seen as a big problem.

EXAMPLE:

While Sally was a foreign student in the Netherlands, she met Joost, and they became engaged. After Sally's studies ended, she returned to the United States. Joost stayed behind for a few months, to finish an architecture project. Because citizens of the Netherlands are not required to obtain visas to visit the U.S., Joost simply picked up his passport when he was ready, and flew to New York. He told the border official he was there to visit friends, and was let in. They got married at city hall the next week, and Joost immediately began preparing his green card application. Joost's actions could easily be considered visa fraud. Although, technically, Joost would be able to use the adjustment of status procedure—in fact, he would probably have no problem submitting his full green card application—when the time comes for Joost's interview, the USCIS officer may question him closely about whether he intended to marry and apply for the green card when he entered the U.S. If Joost can't come up with a good answer, his application will be denied. (There is a waiver Joost can apply for, with the help of an attorney, but it's hard to get.)

An unbelievable number of married couples make the same mistake that Sally and Joost did. A few get lucky and the immigration official who interviews them simply overlooks the problem. If you wait long enough after your entry to either get married or submit the green card application—hopefully two months, at least—you'll face fewer questions, because USCIS may presume you were thinking your plans over in between. And some people are able to convincingly explain that their intentions when entering the U.S. were truly just to visit (or do whatever their visa was intended for), but while here, they talked it over with their relative (or soon-to-be spouse) and decided that the immigrant should stay and apply for a green card.

2. People Who Entered Legally and Remain Legal

Even if you're not the immediate relative of a U.S. citizen, you're allowed to get a green card using the adjustment of status procedure if you meet all the following criteria:

- You entered the U.S. legally, most likely using a visa (such as a tourist or a student visa) or some other entry document like a border crossing card. There are exceptions, however: You cannot adjust under this rule if you entered using a visa waiver, you entered as a crewman on a boat or plane (regardless of what visa you had), or you were in transit to another country without a visa (for example, changing planes in a U.S. airport).
- You have never been out of legal status (your right to stay, as most likely shown on your I-94, hasn't expired).
- You have never worked without INS or USCIS authorization.

Whether or not your permitted stay has expired is an important issue. If you were granted a tourist visa (B-2), for example, the visa itself may be valid for many years and allow multiple entries. However, the important issue is how long the border officials said you could stay on this particular trip. You'll find this information on a small white card called an I-94. If you've overstayed that date, and didn't get any extension or change of status, your status is now illegal, no matter how long your visa is good for.

Note to students: Your I-94 may not have an expiration date, but may simply say "D/S," which means "duration of status." In other words, you're allowed to stay in the U.S. as long as you continue your studies (and don't violate the other terms of your student visa).

Working without authorization is also a troublesome issue for many immigrants. Tourist and student visa holders, for example, are frequent

violators of the work permit rules (tourists aren't allowed to work at all, and students can work only under limited circumstances).

EXAMPLE:

Ahmed and Ali, two brothers age 24 and 26, come to visit their mother in the United States, where she lives as a permanent resident. A month into their six-month stay, their mother's U.S. citizenship finally comes through. Because the mother petitioned for the brothers some years ago, they can use their old priority date, and they find that they're immediately eligible for green cards in the family first preference category (see Chapter 9). But can they apply for adjustment of status? They entered legally, and their stay is still legal. However, Ali has picked up a part-time job in a local restaurant. Only Ahmed will be able to adjust status. Ali will have to return home and try to get his green card through consular processing (where he may face questions about his illegal work).

Another problem that comes up for some applicants is the use of visa fraud to enter the United States. After waiting outside the United States for many years for their priority date to become current, many applicants figure they can simply get a visa to the U.S. and submit an adjustment of status application once they're here. Many of them are disappointed to find out they've just committed visa fraud. Again, visas are meant to be used only for the limited purpose of coming to the U.S. for a temporary stay, and your activities on that visa must remain within its purposes—visitor visa holders must act like tourists, student visa holders must act like students, and so on. Although immigration officials will sometimes look the other way, it's best to avoid the problem, stay in your home country, and finish your application through the local consulate.

EXAMPLE:

Meijin is a U.S. permanent resident who filed visa petitions for her two children, aged 26 and 28, in the second preference category, many years ago. Their priority date finally becomes current, and they receive forms and information from the U.S. consulate in Beijing, China, near where they live. The older child, Guofeng, can't wait—he uses a tourist visa he already happens to have to enter the United States. He tells the border officials in San Francisco he's just coming to sightsee (otherwise they would have turned Guofeng around and sent him home). Guofeng submits a green card application. The application is denied, because Guofeng inappropriately used a tourist visa when his real intention was to stay permanently. His sister, Jinqing, stays home and files her paperwork with the U.S. consulate, and she succeeds in getting an immigrant visa and a green card.



SEE AN EXPERT

Not sure whether you can adjust status under these rules? If you have any doubts at all about whether you qualify to adjust status, consult a qualified immigration attorney. See Chapter 25 for advice on finding a good one.

3. People Who Qualify Under Old Laws

As you've seen, a number of people are barred from adjusting status, including those who entered the United States illegally; overstayed their visa or other permitted time; worked without authorization; entered while in transit without a visa; or entered as crew on planes or boats. However, there are two exceptions that help a few such people, based on changes in the laws over the years.

At one time, a law called "245(i)" allowed all people who were otherwise unable to adjust status to do so by paying a penalty fee. That law is now

gone, but a few people who were around when the law was still in effect are allowed to make use of it. You can apply to adjust status under § 245(i) if you either:

- had an approvable visa petition or labor certification filed on your behalf before January 14, 1998 (it doesn't matter whether it was filed by the same person or employer as the one through whom you're now immigrating), or
- you had an approvable visa petition or labor certification filed on your behalf before April 30, 2001, as long as you were physically in the U.S. on December 21, 2000 (again, it doesn't matter whether it was filed by the same person or employer as the one through whom you're now immigrating).

EXAMPLE:

Amina's father, a U.S. permanent resident, filed a visa petition on her behalf in 1996. She was in the U.S. on a student visa, but then overstayed her visa after graduation. Unfortunately, although the visa petition was approved, the father died before Amina could complete the green card application process. Amina's brother, a U.S. citizen, then files a visa petition for her. When her priority date becomes current (and assuming USCIS hasn't caught and deported her), Amina can use the approval notice from her father's 1996 petition to make her eligible to adjust status in the United States.

There is a financial catch to using these old laws to adjust status, however: You'll have to pay a penalty fee, currently \$1,000.

B. People Who Can't Adjust Status at All

If you don't fall into any of the categories described above, you do not qualify to use adjustment of status as your green card application method. This

means that many people who only recently became eligible to immigrate—for example, by marrying a U.S. citizen—but who entered the U.S. illegally, and had no visa petitions filed for them by any of the important 1998 or 2001 dates, will be ineligible to adjust status.

Unfortunately, this is a difficult trap, because if a person has spent more than 180 days in the U.S. illegally, leaving the U.S. to try to apply through an overseas U.S. consulate could result in being barred from returning for three or ten years. See a lawyer if you're in this or a similar situation.

C. How to File

If you are one of the lucky people who can adjust status in the U.S., a number of picky rules control how and when you can submit your various application forms. Follow them exactly, to be sure that your paperwork can be processed quickly and properly.

1. Whether You Need to Wait for Approval of Form I-130

Most people who are eligible to adjust status can do so only after receiving some official government statement about their basic eligibility for a green card—for example, USCIS approval of their Form I-130 visa petition, a State Department letter indicating they won the lottery, or a grant of political asylum (which can be used as the basis for a green card after one year). However, one exception allows certain applicants applying through family to turn this two-step application process into one step.

If you are the spouse, parent, or minor child of a U.S. citizen (an immediate relative), or if you are over 21 years old and the unmarried child of a U.S. citizen and you have maintained your legal status and never worked illegally and your priority date is current, then you can file the I-130 and adjustment of status paperwork at the same time. If

you've already filed the I-130, file your adjustment application with either the approval or with a request for USCIS to request that the pending file be transferred.

If you are applying through a family member but do not match the description in the paragraph above, then your family member must file Form I-130 and accompanying documents at a USCIS Service Center first. (The procedures for I-130 submissions are explained in the various chapters of this book that apply to different types of eligibility for family members.) Only after the I-130 is approved and your priority date is current can you continue with your application.

2. Adjustment of Status Forms and Documents

To apply for adjustment of status, you must submit the following forms to USCIS:

- ❑ **Copy of government document proving your basic green card eligibility.** This might be an approved I-130 visa petition (unless you're a family member who can submit this petition together with the adjustment of status application as described in Section 1, above), a State Department letter notifying you that you've won the lottery, a grant of political asylum or refugee status, or, if you entered on a K-1 or K-2 fiancé visa, copies of the fiancé visa petition approval notice, your marriage certificate, and your Form I-94 (the little white card tucked into your passport when you entered the U.S.). **Note:** If you're applying for registry, you need not have any such government document (see Chapter 16).
- ❑ **Proof that you're eligible to use the adjustment of status procedure.** What you use as proof depends on the reason you're able to adjust status. For example, if you're an immediate relative who entered the U.S. legally, a copy of your I-94 card from your passport would be sufficient. If you're claiming eligibility because you fall under old laws, you'll need to submit a copy of your old approved I-130 visa petition or labor certification. **Note:** If you're an asylee or refugee, or you're applying for registry, or you entered the U.S. on a fiancé visa (K-1, K-2, K-3, or K-4) and got married or met your other visa requirements, you don't need to worry about this; you're automatically eligible to adjust status.
- ❑ **Form I-485, Application to Register Permanent Resident or Adjust Status.** This is the primary form used to adjust status, which collects information on who you are, where you live, and how you're eligible for a green card. (See the sample at the end of this chapter.)
- ❑ **Form I-485 Supplement A.** Use this form only if you're applying to adjust status based on old laws (245(i)). Also remember to pay the penalty fee.
- ❑ **If you want permission to work, Form I-765.** (See the sample at the end of this chapter.) Several months may pass before you're approved for a green card, during which time you can't work without getting permission. Use this form to ask permission (you don't have to pay any fee with it—it's included in your overall application fee—but if for some reason you submit your work permit application later, you'll have to submit a copy of your Form I-797C Notice of Action receipt showing you filed the I-485, in order to avoid paying a separate fee). You'll be given an Employment Authorization Document (EAD), which is an identification card with your photo. Even if you don't plan to work, this card is a handy way to prove who you are. The last question on the form, number 16, can be confusing (and the instructions list many ways that different types of applicants must answer it). As an adjustment applicant, you simply answer it (c)(9), regardless of how you became eligible for your green card.

- ❑ **Form G-325A, Biographic Information.** This form asks for information on where you have lived and worked since you were 16 years old, for background investigation. (See the sample at the end of Chapter 7.)
- ❑ **Form I-864, Affidavit of Support.** (See the sample in Chapter 19.) If you're applying through a family member (not through an employer or as an asylee or refugee, nor if you're a self-petitioning widow(er) or a battered spouse or child), you must submit this sworn statement from the petitioner (a U.S. citizen or lawful permanent resident who is sponsoring you, who has sufficient income and who promises to support you and to reimburse the U.S. government if you must receive public assistance after receiving your permanent residence).
- ❑ **Form I-864W (if you fall within an exception to Form I-864 requirement).** Certain exceptions apply: The petitioner need not submit a Form I-864 if either the immigrant or the immigrant's spouse or parent has already worked in the U.S. for 40 quarters as defined by the Social Security system—about ten years. Nor do you need the Form I-864 if the beneficiary is a child (adopted or natural born) who will become a U.S. citizen automatically upon entering the U.S. If you're exempt from the affidavit of support requirement due to one of these exceptions, fill out Form I-864W instead of the regular Form I-864.
- ❑ **Documents to support Form I-864.** The latest year's tax returns (or IRS transcripts) of the citizen or permanent resident should be attached to the affidavit as proof of financial capacity (or up to three years' worth if it will strengthen your case). Proof of the sponsor's employment should also be attached.
- ❑ **Additional Form I-864 or I-864A (Contract Between Sponsor and Household Member) if getting help with sponsorship.** If your petitioner doesn't earn enough to meet the government requirements, you'll have to find an additional financial sponsor or another member of the sponsor's household who can add income and assets to the mix.
- ❑ **Form I-864EZ (for simple cases).** If you are the only person that your petitioner is sponsoring, and your petitioner can meet the sponsorship requirements based upon his or her income alone, it's okay to use a shorter version of the form called I-864EZ.
- ❑ **Job letter for immigrant.** If you are working, you can submit a job letter from your employer in the United States stating your work history, when you started to work, whether your employment is permanent, and how much you earn, along with a payroll statement confirming your earnings.

If you are applying for a green card based on marriage, the job letter must include your marital status, name of spouse, and name and telephone number of person to be notified in case of an emergency.

Sample Sponsor's Job Letter

ABC Company
123 Main Street
Anytown, Anystate 12345

April 24, 20xx
U.S. Citizenship and Immigration Services
26 Federal Plaza
New York, NY 10278

Dear Sir or Madam:

This letter is to certify that Jon Fratellanza has been employed by this company since March 2005 as a widget inspector.

His salary is \$850 per week and he is employed on a full-time, permanent basis. His prospects for continued employment with this company are excellent.

Our personnel records indicate that this employee is married. In case of emergency, his spouse, Danielle Fratellanza, must be notified at their home telephone: 111-222-3456.

Sincerely,
Milton Mutter
Milton Mutter
Personnel Director, ABC Company

- ❑ **Form I-693, Medical Examination of Aliens Seeking Adjustment of Status.** This must be filled out by a USCIS-approved doctor and submitted in an unopened envelope. **Fiancés take note:** If you had an exam overseas within the last year, all you need is a vaccination Supplemental Form to I-693, also completed by a USCIS-designated doctor. An exception to this is if medical grounds of inadmissibility

were noted during your exam or when you entered the United States; then you'll need a new exam and may have to request a waiver of inadmissibility.

- ❑ **If applying as an asylee or refugee, proof that you've been physically present in the U.S. for at least a year.** This could be a letter verifying your employment, an apartment lease, or school records. You'll also need to include evidence of any trips you've made outside the U.S. since gaining asylum. (Remember, if you've made any trips to the country from which you claimed asylum or refugee status, you've cancelled your eligibility and should see a lawyer.)
- ❑ **If applying as an asylee or refugee, a copy of your birth certificate.**
- ❑ **If applying for registry, proof that you have been in the U.S. since January 1, 1972, as described in Chapter 16.**
- ❑ **Two passport-style color photographs.**
- ❑ **Filing fee.** USCIS charges fees for handling applications, based on which forms you submit. They regularly raise the fees, so check with USCIS for the latest before you turn in your application. As of the date that this book went to print, the fee to file Form I-485 is \$930. Refugees pay no fee. Applicants under age 14 who are filing with at least one parent owe a fee total of \$600. Applicants under age 14 who are not filing with a parent have a fee total of \$930. Neither needs to pay a separate fingerprinting fee. Pay by money order or certified check made payable the U.S. Department of Homeland Security. In addition, if you file Form I-485 Supplement A, you'll have to pay the penalty fee of \$1,000 (see Section A). Fingerprints ("biometrics") are an additional \$80 (but are not required if you're age 79 or older).

3. Submission Procedures

The procedures for submitting an adjustment of status application have changed a lot in recent years. In the past, you could ordinarily walk your application right into a local USCIS office. Now,

however, you'll have to mail your application to a service center or an out-of-state processing office. See the chart below for the appropriate address.

Where to Send an Adjustment of Status Application	
If you're applying based on:	Send your adjustment of status application to:
A family relationship (for example, you're the spouse, widow, parent, or child of a U.S. citizen, or the spouse or child of a U.S. permanent resident); as the battered spouse or child with an approved Form I-360 petition; as a winner of the diversity visa lottery; as someone eligible for registry; as a special immigrant member of the Armed Forces; or as an Amerasian	U.S. Citizenship and Immigration Services, P.O. Box 805887, Chicago, IL 60680-4120 (if you're using the U.S. Postal Service) or U.S. Citizenship and Immigration Services, Attn: FBASI, 427 S. LaSalle, 3rd Floor, Chicago, IL 60605-1029 (if you're using a private courier)
Having held political asylum for at least one year and you live in one of the following states: AK, AZ, CA, CO, Guam, HI, ID, IL, IN, IA, KS, MI, MN, MO, MT, NE, NV, ND, OH, OR, SD, UT, WA, WI or WY	USCIS, Nebraska Service Center, P.O. Box 87485, Lincoln, NE 68501-7485 (if you're using the U.S. Postal Service) or USCIS, Nebraska Service Center, 850 S. Street, Lincoln, NE 68508-1225 (if you're using a private courier)
Having held political asylum for at least one year and you live in one of the following states: AL, AR, CT, DE, FL, GA, KY, LA, ME, MD, MA, MS, NH, NJ, NM, NY, NC, SC, OK, PA, Puerto Rico, RI, TN, TX, VT, VA, U.S. Virgin Islands, WV, or Washington, DC	USCIS, Texas Service Center, P.O. Box 851804, Mesquite, TX 75185-1804 (if you're using the U.S. Postal Service) or USCIS, Texas Service Center, 4141 North St. Augustine Road, Dallas, TX 75227 (if you're using a private courier)
Having had refugee status for at least one year	USCIS Nebraska Service Center, P.O. Box 87209, Lincoln, NE 68501-7209 (if you're using the U.S. Postal Service) or USCIS, Nebraska Service Center, 850 S. Street, Lincoln, NE 68508-1225 (if you're using a private courier)
Having an approved petition as an Afghan or Iraqi translator	USCIS, Nebraska Service Center, P.O. Box 87485, Lincoln, NE 68501-7485 (if you're using the U.S. Postal Service) or USCIS, Nebraska Service Center, 850 S. Street, Lincoln, NE 68508-1225 (if you're using a private courier)

Travel Outside the U.S. Is Restricted

You or your minor children should not leave the United States while waiting for your adjustment of status interview without first applying for and receiving advance permission to reenter the United States. This is called “advance parole.” You can apply for advance parole when you file your adjustment of status application, or later, by submitting Form I-131 to the office handling your file. You must pay a fee (currently \$170).

If you leave without this permission, USCIS will cancel your adjustment of status application. It will assume that your departure shows your lack of interest in receiving your green card in the United States and that you have abandoned your application.

Note that if you have been out of status for 180 days or more after April 1, 1997 before filing your green card application, you should not travel until your application is approved. In this case, according to USCIS interpretation, you must wait for three years to return to the United States—or ten years if you were out of status for over one year. Not even an advance parole document will protect you.

D. After You Apply

After you’ve submitted your adjustment of status application, USCIS should send you a receipt notice (on Form I-797). This will confirm that your application contained everything it should have, and that you’re now in line for an adjustment of status interview. If your application was incomplete, you will receive a letter indicating what’s missing, and you should reply as soon as possible.

How long you’ll have to wait for your adjustment of status interview depends on how backed up your local USCIS office is. (These interviews are held locally, at a different office than the one you

submitted your application to.) Some months before your interview is scheduled, you’ll be called in to have your fingerprints taken for your security checks.

During this wait, it’s best not to take any long trips or move to a different address. USCIS won’t give you much advance notice of your interview date.

E. Interview and Approval

Although USCIS makes some exceptions, it requires most applicants to attend an interview at a local USCIS office before approving them for permanent residence and a green card. You’ll get a letter (see the sample below) advising you of the interview date and location, and telling you what to bring along.

The required documents normally include a photo identification; recent financial records from whoever signed the affidavit of support, to show continuing employment and ownership of assets; documents updating other information in your application, for example if you’ve changed your name; and originals of your birth certificate, passport, visas, and other documents you’ve submitted copies of in connection with your application (these are for the USCIS officer to view, not keep); and documents showing any changes in the information on your application, such as a new employer.

If you’re applying based on marriage, you’ll also need to bring documents proving that your marriage is the real thing, such as copies of your home mortgage or lease, joint credit card statements, children’s birth certificates, and more.

Then there’s the question of who to bring along. Everyone who submitted a green card application and is mentioned in the interview notice should go along, including children. And if the green cards are based on marriage, the U.S. petitioner needs

to be there as well. For other family relationships, however—for example if you're getting a green card as the brother, sister, parent, or child of a U.S. citizen—the rules are less strict. USCIS would prefer to see the petitioner there, first off to make sure that he or she is still alive, and in case questions arise about the affidavit of support. But if that's inconvenient, for example if the petitioner lives in another part of the U.S., you can go to your appointment without the petitioner. However, it's best to bring a recent, signed, sworn statement by the petitioner explaining the situation and providing a phone number in case USCIS wants to follow up.

When bringing new documents, be sure to make copies of any that you don't want to leave with USCIS—they're usually happy with copies, particularly if they can view the original when you bring it. They're unwilling, however, to make photocopies for you, so you must either bring a copy or lose your original to the USCIS file.

If you don't speak English, you'll need to bring your own interpreter. You don't need to spend money on a professional—a friend or family member over 18 who is a legal U.S. resident will do. But it's worth spending the money if you don't know anyone who's truly fluent in both English and your native language—your future is at stake here, and a little confusion may delay or destroy your hopes of getting a green card.



CAUTION

Arrive on time—and follow the rules.

Leave extra time for parking and passing through the security guard post at the USCIS office. Remember, this is a federal government building, so they'll X-ray your possessions and confiscate pocket knives or other illegal materials. They may also prohibit other items, such as cell phones and food. If you arrive late, you will probably lose your chance to be interviewed that day, and go through major hassles getting USCIS to reschedule you.

At your interview, a USCIS officer will review your application, ask you some questions, and presumably approve you for a green card. Most of the questions will relate to what's already on your application, such as your current address, how you last entered the United States, and whether you have a criminal record or are otherwise ineligible for a green card.

If you're applying based on marriage, be prepared to answer additional questions to prove that your marriage is the real thing, such as how you met, details of your wedding, and details about your house and your life together.

Most interviews last about 20 minutes. Answer the questions courteously and honestly—but don't volunteer extra information. Saying too much wastes the officer's time and may bring to light information that would have been better left unsaid.

If everything is in order, your application for adjustment of status should be approved. Your passport may be stamped with a temporary approval, good for one year, authorizing you to stay in the United States. If you are not approved at your interview, you will later be notified of the approval and requested to bring your passport to the nearest USCIS office.

Your green card—which is actually pink—will be sent by mail to your address in several weeks or months. Be sure to inform USCIS of any change of address, because your green card might not be forwarded to you by the post office. Even after you get your green card, you are obligated to send USCIS written word every time your address changes—see Chapter 24 for this and other important rules on keeping your right to a green card.

It's wonderful! You are now a lawful permanent resident who is authorized to work and stay in the United States legally.

Immigrant Story: Proving a Real Marriage

Brian, a U.S. citizen, and Toshi, from Japan, met and fell in love while they were in college in Champaign, Illinois. Brian graduated two years ahead of Toshi, and got a great job in Atlanta. They corresponded long distance, and the next year got married and applied for Toshi's green card.

However, by the time Toshi got called for her adjustment of status interview, the couple was still not living together. They were worried that the immigration officer would not believe that their marriage was the real thing. After much thought, here are the documents they came up with to prove their relationship:

- college receipts showing that Brian was helping pay for Toshi's education
- sworn statements from Toshi's dormmates attesting to Brian's frequent visits
- documents showing that Toshi is the beneficiary of Brian's life insurance policy and 401(k)
- letter from a fertility specialist that Brian and Toshi had consulted about her difficulty in getting pregnant, and
- copies of emails and phone bills showing their frequent communication.

Brian and Toshi easily answered all the officer's questions at the interview, and Toshi was granted U.S. permanent residence.



SEE AN EXPERT

If your application is denied, consult an experienced immigration attorney. Unless you have some other visa or legal status in the United States, your file will be transferred to the Immigration Court for removal proceedings. See Chapter 25 for advice on finding a good attorney.

Interview Tips for Spouses

If you are requesting an adjustment of status as the spouse of a U.S. citizen or permanent resident, USCIS will require a personal interview with you both before granting your application.

Bring copies of all the forms relevant to your application, along with evidence of a bona fide marriage—such as wedding pictures, joint bank statements, rental agreements, children's birth certificates, health insurance contracts, and more. (See Chapter 7.)

If you've got solid documentary evidence of your real marriage, the officer is likely to ask only a few questions. If, on the other hand, the documents are weak, or you and your spouse don't seem able to answer the questions about your marriage, you may be sent for what's called a "fraud interview." This means that you and your spouse will each separately meet with a different USCIS officer, who will ask each of you the same set of questions, and then check whether your answers match up. If you don't already have an attorney, this is a good time to ask that the interview be postponed, so that you can return with legal help.

Sample Interview Appointment Notice

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action



REQUEST FOR APPLICANT TO APPEAR FOR INITIAL INTERVIEW			NOTICE DATE January 31, 2007		
CASE TYPE FORM I-485, APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS			AS A 099 909 909		
APPLICATION NUMBER MSC0712345678	RECEIVED DATE January 12, 2007	PRIORITY DATE January 12, 2007	PAGE 1 of 1		
HAI-ZI ZHANG c/o ILONA BRAY 950 PARKER ST. BERKELEY, CA 94710					
You are hereby notified to appear for the interview appointment, as scheduled below, for the completion of your Application to Register Permanent Residence or Adjust Status (Form I-485) and any supporting applications or petitions. Failure to appear for this interview and/or failure to bring the below listed items will result in the denial of your application. (8 CFR 103.2(b)(13)) Who should come with you? ☐ If your eligibility is based on your marriage, your husband or wife must come with you to the interview. ☐ If you do not speak English fluently, you should bring an interpreter. ☐ Your attorney or authorized representative may come with you to the interview. ☐ If your eligibility is based on a parent/child relationship and the child is a minor, the petitioning parent and the child must appear for the interview. *NOTE: Every adult (over 18 years of age) who comes to the interview must bring Government-issued photo identification, such as a driver's license or ID card, in order to enter the building and to verify his/her identity at the time of the interview. You do not need to bring your children unless otherwise instructed. Please be on time, but do not arrive more than 45 minutes early. We may record or videotape your interview. YOU MUST BRING THE FOLLOWING ITEMS WITH YOU: (Please use as a checklist to prepare for your interview) ☐ This Interview Notice and your Government issued photo identification. ☐ A completed medical examination (Form I-693) and vaccination supplement in a sealed envelope (unless already submitted). ☐ A completed Affidavit(s) of Support (Form I-864) with all required evidence, including the following, for <u>each</u> of your sponsors (unless already submitted): ☐ Federal Income Tax returns and W-2's, or certified IRS printouts, for the past 3 years; ☐ Letters from each current employer, verifying current rate of pay and average weekly hours, and pay stubs for the past 2 months; ☐ Evidence of your sponsor's and/or co-sponsor's United States Citizenship or Lawful Permanent Resident status. ☐ All documentation establishing your eligibility for Lawful Permanent Resident status. ☐ Any immigration-related documentation ever issued to you, including any Employment Authorization Document (EAD) and any Authorization for Advance Parole (Form I-512). ☐ All travel documents used to enter the United States, including Passports, Advance Parole documents (I-512) and I-94s (Arrival/Departure Document). ☐ Your Birth Certificate. ☐ Your petitioner's Birth Certificate and your petitioner's evidence of United States Citizenship or Lawful Permanent Resident Status. ☐ If you have children, bring a Birth Certificate for each of your children. ☐ If your eligibility is based on your marriage, in addition to your spouse coming to the interview with you, bring: ☐ A certified copy of your Marriage Document issued by the appropriate civil authority. ☐ Your spouse's Birth Certificate and your spouse's evidence of United States Citizenship or Lawful Permanent Resident status; ☐ If either you or your spouse were ever married before, all divorce decrees/death certificates for each prior marriage/former spouse; ☐ Birth Certificates for all children of this marriage, and custody papers for your children and for your spouse's children not living with you; ☐ Supporting evidence of your relationship, such as copies of any documentation regarding joint assets or liabilities you and your spouse may have together. This may include: tax returns, bank statements, insurance documents (car, life, health), property documents (car, house, etc.), rental agreements, utility bills, credit cards, contracts, leases, photos, correspondence and/or any other documents you feel may substantiate your relationship. ☐ Original and copy of each supporting document that you submitted with your application. Otherwise, we may keep your originals for our records. ☐ If you have ever been arrested, bring the related Police Report and the original or certified Final Court Disposition for each arrest, even if the charges have been dismissed or expunged. If no court record is available, bring a letter from the court with jurisdiction indicating this. ☐ A certified English translation for each foreign language document. The translator must certify that s/he is fluent in both languages, and that the translation in its entirety is complete and accurate. YOU MUST APPEAR FOR THIS INTERVIEW: If an emergency, such as your own illness or a close relative's hospitalization, prevents you from appearing, call the U.S. Citizenship and Immigration Services (USCIS) National Customer Service Center at 1-800-375-5283 as soon as possible. Please be advised that rescheduling will delay processing of application/petition, and may require some steps to be repeated. It may also affect your eligibility for other immigration benefits while this application is pending. If you have questions, please call the USCIS National Customer Service Center at 1-800-375-5283 (hearing impaired TDD service is 1-800-767-1833). <table border="1"> <tr> <td> PLEASE COME TO: U.S. Citizenship and Immigration Services 630 SANSOME ST 2ND FLOOR - ADJUSTMENT OF STATUS SAN FRANCISCO CA 94111 </td> <td> ON: Wednesday, March 28, 2007 AT: 02:15 PM </td> </tr> </table>				PLEASE COME TO: U.S. Citizenship and Immigration Services 630 SANSOME ST 2ND FLOOR - ADJUSTMENT OF STATUS SAN FRANCISCO CA 94111	ON: Wednesday, March 28, 2007 AT: 02:15 PM
PLEASE COME TO: U.S. Citizenship and Immigration Services 630 SANSOME ST 2ND FLOOR - ADJUSTMENT OF STATUS SAN FRANCISCO CA 94111	ON: Wednesday, March 28, 2007 AT: 02:15 PM				
3	REPRESENTATIVE COPY				

Application to Register Permanent Resident or Adjust Status, Sample Form I-485 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0023; Expires 09/30/08
**I-485, Application to Register
Permanent Residence or Adjust Status**

START HERE - Please type or print in black ink.

Part 1. Information about you.

Family Name Michelski	Given Name Anda	Middle Name M.
Address- C/O Grun Michela		
Street Number and Name 68 Watertown Boulevard		Apt. # 12
City Erie		
State Pennsylvania		Zip Code 19380
Date of Birth (mm/dd/yyyy) 06/28/1980	Country of Birth: Bulgaria	
	Country of Citizenship/Nationality: Bulgaria	
U.S. Social Security # 128-46-9255		A # (if any)
Date of Last Arrival (mm/dd/yyyy) 11/04/2005		I-94 # 123 123 123
Current USCIS Status B-1		Expires on (mm/dd/yyyy) 05/1/2008

Part 2. Application type. (Check one.)

I am applying for an adjustment to permanent resident status because:

- a. ☒ an immigrant petition giving me an immediately available immigrant visa number has been approved. (Attach a copy of the approval notice, or a relative, special immigrant juvenile or special immigrant military visa petition filed with this application that will give you an immediately available visa number, if approved.)
- b. ☐ my spouse or parent applied for adjustment of status or was granted lawful permanent residence in an immigrant visa category that allows derivative status for spouses and children.
- c. ☐ I entered as a K-1 fiancé(e) of a United States citizen whom I married within 90 days of entry, or I am the K-2 child of such a fiancé(e). (Attach a copy of the fiancé(e) petition approval notice and the marriage certificate).
- d. ☐ I was granted asylum or derivative asylum status as the spouse or child of a person granted asylum and am eligible for adjustment.
- e. ☐ I am a native or citizen of Cuba admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least one year.
- f. ☐ I am the husband, wife or minor unmarried child of a Cuban described above in (e) and I am residing with that person, and was admitted or paroled into the United States after January 1, 1959, and thereafter have been physically present in the United States for at least one year.
- g. ☐ I have continuously resided in the United States since before January 1, 1972.
- h. ☐ Other basis of eligibility. Explain. If additional space is needed, use a separate piece of paper.

I am already a permanent resident and am applying to have the date I was granted permanent residence adjusted to the date I originally arrived in the United States as a nonimmigrant or parolee, or as of May 2, 1964, whichever date is later, and: (Check one.)

- i. ☐ I am a native or citizen of Cuba and meet the description in (e) above.
- j. ☐ I am the husband, wife or minor unmarried child of a Cuban, and meet the description in (f) above.

For USCIS Use Only

Returned	Receipt
Resubmitted	
Reloc Sent	
Reloc Rec'd	
Applicant Interviewed	

Section of Law

- ☐ Sec. 209(b), INA
☐ Sec. 13, Act of 9/11/57
☐ Sec. 245, INA
☐ Sec. 249, INA
☐ Sec. 1 Act of 11/2/66
☐ Sec. 2 Act of 11/2/66
☐ Other

Country Chargeable

Eligibility Under Sec. 245

- ☐ Approved Visa Petition
☐ Dependent of Principal Alien
☐ Special Immigrant
☐ Other

Preference

Action Block

**To be Completed by
Attorney or Representative, if any**
☐ Fill in box if G-28 is attached to represent the applicant.

VOLAG #

ATTY State License #

Sample Form I-485 (page 2)

Part 3. Processing information.

A. City/Town/Village of Birth <u>Sofia</u>		Current Occupation <u>Language teacher</u>	
Your Mother's First Name <u>Anastasia</u>		Your Father's First Name <u>Liski</u>	
Give your name exactly as it appears on your Arrival/Departure Record (Form I-94) <u>Anda Michelski</u>			
Place of Last Entry Into the United States (City/State) <u>JFK Airport, New York</u>		In what status did you last enter? (Visitor, student, exchange alien, crewman, temporary worker, without inspection, etc.) <u>Visitor</u>	
Were you inspected by a U.S. Immigration Officer? ☒ Yes ☐ No			
Nonimmigrant Visa Number <u>1062745139652</u>		Consulate Where Visa Was Issued <u>Sofia</u>	
Date Visa Was Issued (mm/dd/yyyy) <u>7/2/2006</u>	Gender: ☐ Male ☒ Female	Marital Status: ☒ Married ☐ Single ☐ Divorced ☐ Widowed	
Have you ever before applied for permanent resident status in the U.S.? ☒ No ☐ Yes. If you checked "Yes," give date and place of filing and final disposition.			

B. List your present husband/wife, all of your sons and daughters (If you have none, write "none." If additional space is needed, use separate paper).

Family Name	Given Name	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A #	Applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A #	Applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A #	Applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A #	Applying with you? ☐ Yes ☐ No
Family Name	Given Name	Middle Initial	Date of Birth (mm/dd/yyyy)
Country of Birth	Relationship	A #	Applying with you? ☐ Yes ☐ No

C. List your present and past membership in or affiliation with every organization, association, fund, foundation, party, club, society or similar group in the United States or in other places since your 16th birthday. Include any foreign military service in this part. If none, write "none." Include the name(s) of organization(s), location(s), dates of membership, from and to, and the nature of the organization(s). If additional space is needed, use a separate piece of paper.

<u>None</u>

Sample Form I-485 (page 3)

Part 3. Processing information. (Continued)

Please answer the following questions. (If your answer is "Yes" on any one of these questions, explain on a separate piece of paper. Answering "Yes" does not necessarily mean that you are not entitled to adjust status or register for permanent residence.)

1. Have you ever, in or outside the United States:
 - a. knowingly committed any crime of moral turpitude or a drug-related offense for which you have not been arrested? ☐ Yes ☒ No
 - b. been arrested, cited, charged, indicted, fined or imprisoned for breaking or violating any law or ordinance, excluding traffic violations? ☐ Yes ☒ No
 - c. been the beneficiary of a pardon, amnesty, rehabilitation decree, other act of clemency or similar action? ☐ Yes ☒ No
 - d. exercised diplomatic immunity to avoid prosecution for a criminal offense in the United States? ☐ Yes ☒ No
2. Have you received public assistance in the United States from any source, including the United States government or any state, county, city or municipality (other than emergency medical treatment), or are you likely to receive public assistance in the future? ☐ Yes ☒ No
3. Have you ever:
 - a. within the past ten years been a prostitute or procured anyone for prostitution, or intend to engage in such activities in the future? ☐ Yes ☒ No
 - b. engaged in any unlawful commercialized vice, including, but not limited to, illegal gambling? ☐ Yes ☒ No
 - c. knowingly encouraged, induced, assisted, abetted or aided any alien to try to enter the United States illegally? ☐ Yes ☒ No
 - d. illicitly trafficked in any controlled substance, or knowingly assisted, abetted or colluded in the illicit trafficking of any controlled substance? ☐ Yes ☒ No
4. Have you ever engaged in, conspired to engage in, or do you intend to engage in, or have you ever solicited membership or funds for, or have you through any means ever assisted or provided any type of material support to any person or organization that has ever engaged or conspired to engage in sabotage, kidnapping, political assassination, hijacking or any other form of terrorist activity? ☐ Yes ☒ No
5. Do you intend to engage in the United States in:
 - a. espionage? ☐ Yes ☒ No
 - b. any activity a purpose of which is opposition to, or the control or overthrow of, the government of the United States, by force, violence or other unlawful means? ☐ Yes ☒ No
 - c. any activity to violate or evade any law prohibiting the export from the United States of goods, technology or sensitive information? ☐ Yes ☒ No
6. Have you ever been a member of, or in any way affiliated with, the Communist Party or any other totalitarian party? ☐ Yes ☒ No
7. Did you, during the period from March 23, 1933 to May 8, 1945, in association with either the Nazi Government of Germany or any organization or government associated or allied with the Nazi Government of Germany, ever order, incite, assist or otherwise participate in the persecution of any person because of race, religion, national origin or political opinion? ☐ Yes ☒ No
8. Have you ever engaged in genocide, or otherwise ordered, incited, assisted or otherwise participated in the killing of any person because of race, religion, nationality, ethnic origin or political opinion? ☐ Yes ☒ No
9. Have you ever been deported from the United States, or removed from the United States at government expense, excluded within the past year, or are you now in exclusion, deportation, removal or rescission proceedings? ☐ Yes ☒ No
10. Are you under a final order of civil penalty for violating section 274C of the Immigration and Nationality Act for use of fraudulent documents or have you, by fraud or willful misrepresentation of a material fact, ever sought to procure, or procured, a visa, other documentation, entry into the United States or any immigration benefit? ☐ Yes ☒ No
11. Have you ever left the United States to avoid being drafted into the U.S. Armed Forces? ☐ Yes ☒ No
12. Have you ever been a J nonimmigrant exchange visitor who was subject to the two-year foreign residence requirement and have not yet complied with that requirement or obtained a waiver? ☐ Yes ☒ No
13. Are you now withholding custody of a U.S. citizen child outside the United States from a person granted custody of the child? ☐ Yes ☒ No
14. Do you plan to practice polygamy in the United States? ☐ Yes ☒ No

Sample Form I-485 (page 4)

Part 4. Signature. *(Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)***Your registration with U.S. Citizenship and Immigration Services.**

"I understand and acknowledge that, under section 262 of the Immigration and Nationality Act (Act), as an alien who has been or will be in the United States for more than 30 days, I am required to register with U.S. Citizenship and Immigration Services. I understand and acknowledge that, under section 265 of the Act, I am required to provide USCIS with my current address and written notice of any change of address within **ten** days of the change. I understand and acknowledge that USCIS will use the most recent address that I provide to USCIS, on any form containing these acknowledgements, for all purposes, including the service of a Notice to Appear should it be necessary for USCIS to initiate removal proceedings against me. I understand and acknowledge that if I change my address without providing written notice to USCIS, I will be held responsible for any communications sent to me at the most recent address that I provided to USCIS. I further understand and acknowledge that, if removal proceedings are initiated against me and I fail to attend any hearing, including an initial hearing based on service of the Notice to Appear at the most recent address that I provided to USCIS or as otherwise provided by law, I may be ordered removed in my absence, arrested and removed from the United States."

Selective Service Registration.

The following applies to you if you are a male at least 18 years old, but not yet 26 years old, who is required to register with the Selective Service System: "I understand that my filing this adjustment of status application with U.S. Citizenship and Immigration Services authorizes USCIS to provide certain registration information to the Selective Service System in accordance with the Military Selective Service Act. Upon USCIS acceptance of my application, I authorize USCIS to transmit to the Selective Service System my name, current address, Social Security Number, date of birth and the date I filed the application for the purpose of recording my Selective Service registration as of the filing date. If, however, USCIS does not accept my application, I further understand that, if so required, I am responsible for registering with the Selective Service by other means, provided I have not yet reached age 26."

Applicant's Certification.

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that U.S. Citizenship and Immigration Services (USCIS) needs to determine eligibility for the benefit I am seeking.

<i>Signature</i>	<i>Print Your Name</i>	<i>Date</i>	<i>Daytime Phone Number</i>
<i>Anda Michelski</i>	Anda Michelski	05/19/08	(314) 276-9440

NOTE: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.

Part 5. Signature of person preparing form, if other than above. (sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

<i>Signature</i>	<i>Print Your Full Name</i>	<i>Date</i>	<i>Phone Number (Include Area Code)</i>
			()

Firm Name and Address *E-Mail Address (if any)*

Application for Employment Authorization, Sample Form I-765

OMB No. 1615-0040; Expires 08/31/08

Department of Homeland Security
U.S. Citizenship and Immigration Services

**I-765, Application for
Employment Authorization**

Do not write in this block.

Remarks	Action Block	Fee Stamp
A#		
Applicant is filing under §274a.12 _____		
☐ Application Approved. Employment Authorized / Extended (<i>Circle One</i>) _____ until _____ (Date). Subject to the following conditions: _____ (Date). ☐ Application Denied. ☐ Failed to establish eligibility under 8 CFR 274a.12 (a) or (c). ☐ Failed to establish economic necessity as required in 8 CFR 274a.12(c)(14), (18) and 8 CFR 214.2(f)		

I am applying for:

- ☒ Permission to accept employment.
☐ Replacement of lost Employment Authorization Document.
☐ Renewal of my permission to accept employment (*attach previous Employment Authorization Document*).

1. Name (Family Name in CAPS) (First) (Middle) MANZETTI Julie Anna	11. Have you ever before applied for employment authorization from USCIS? ☐ Yes (If yes, complete below) ☒ No Which USCIS Office? _____ Date(s) _____
2. Other Names Used (Include Maiden Name) Juliet Stefano	Results (Granted or Denied - attach all documentation) _____
3. Address in the United States (Number and Street) (Apt. Number) 280 Mosher Street	12. Date of Last Entry into the U.S. (mm/dd/yyyy) 09/01/2007
(Town or City) (State/Country) (ZIP Code) Baltimore Maryland 21216	13. Place of Last Entry into the U.S. New York, New York
4. Country of Citizenship/Nationality Italy	14. Manner of Last Entry (Visitor, Student, etc.) Parolee
5. Place of Birth (Town or City) (State/Province) (Country) Verona Italy	15. Current Immigration Status (Visitor, Student, etc.) Parolee
6. Date of Birth (mm/dd/yyyy) 12/23/1962	16. Go to Part 2 of the Instructions, Eligibility Categories. In the space below place the letter and number of the category you selected from the instructions. (For example, (a)(8); (c)(17)(iii); etc.)
7. Gender ☐ Male ☒ Female	Eligibility under 8 CFR 274a.12 () (c) (9)
8. Marital Status ☒ Married ☐ Single ☐ Widowed ☐ Divorced	
9. U.S. Social Security Number (Include all numbers you have ever used, if any) none	
10. Alien Registration Number (A-Number) or I-94 Number (if any) A45678910	

Certification.

Your Certification: I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct. Furthermore, I authorize the release of any information that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking. I have read the Instructions in **Part 2** and have identified the appropriate eligibility category in **Block 16**.

Signature *Juliet Manzetti* Telephone Number (301) 123-4567 Date May 25, 2008

Signature of person preparing form, if other than above: I declare that this document was prepared by me at the request of the applicant and is based on all information of which I have any knowledge.

Print Name Address Signature Date

Remarks	Initial Receipt	Resubmitted	Relocated					Completed	
			Rec'd	Sent	Approved	Denied	Returned		

Consular Processing

A. How Your Case Gets to the Consulate	238
B. Forms and Documents You'll Need to Provide	239
D. Attending Your Visa Interview	241
E. Approval of Your Immigrant Visa.....	243
F. Arriving in the United States.....	244

The second type of government procedure for getting a green card (other than adjustment of status) is “consular processing.” It means that the immigrant goes to a U.S. embassy or consulate to complete the green card application. Only after the consulate interviews and approves the immigrant for an immigrant visa can he or she enter the United States and claim permanent resident status.

Most immigrants will have no choice but to use consular processing as their application method. Immigrants who are overseas are almost all required to use consular processing, though many would love to enter the U.S. and finish their application there. However, with the exception of fiancés and people immigrating based on marriage (who can use a K-3 fiancé visa to enter the U.S. and then adjust status) most immigrants will only get themselves in trouble (for example, accused of visa fraud) if they try to enter the U.S. to finish their green card application.

Immigrants who are already in the United States may be required to use consular processing if they are not eligible to use the adjustment of status procedure described in Chapter 18. Unfortunately, this lack of choice creates a trap for immigrants who have lived illegally in the U.S. for 180 days or more. By leaving the U.S., they become subject to penalties for their illegal stay. Even if they otherwise qualify for a green card, the consulate must, under the law, bar them from reentering the U.S. for three years (if their illegal stay was between 180 days and one year) or ten years (for illegal stays over one year). See an attorney if you’re in this situation—there is a waiver you can apply for, but it’s hard to get it approved.

This chapter will discuss the paperwork and other requirements involved in consular processing.



CAUTION

Remember, this chapter discusses only procedures, not your underlying eligibility for a green card. Unless you’ve already completed the steps explained in another chapter—most likely one describing family- or lottery-based visas—you shouldn’t be in this chapter. It’s only for people with approved visa petitions or winning lottery letters who are now completing their green card application process.

If You Have a Choice of Procedure

While the requirements for adjustment of status (getting a green card at a USCIS office) are rather restrictive, if you qualify, there are a number of advantages to that procedure over consular processing. If you are currently in the U.S., read Chapter 18 carefully to see whether you qualify to get a green card through adjustment of status.

A. How Your Case Gets to the Consulate

When your relative filled out your visa petition, or when you filled out your lottery application, your address or other information will have indicated to the U.S. government which consulate would be most convenient for you. After your visa petition has been approved or you’ve won the lottery, a central office known as the National Visa Center (NVC) will take care of transferring your file to the appropriate consulate. (Remember that if you’re not an immediate relative but a “preference relative,” you may have to wait several years before your priority date becomes current and your case is transferred to a consulate—see Chapter 5 for details.)

A lot has to happen, however, before the NVC transfers your case. First, the NVC will send you a Choice of Address and Agent form (DS-3032). This is a very simple form, which you'll need to fill out, sign, and send back to continue the process. (See the sample at the end of this chapter.)

But don't let the simplicity of the form fool you. By choosing an "agent," as the form asks, you're essentially deciding where all the important mail from the U.S. government regarding your immigration should go—to you, at your overseas address, or to someone else, most likely your petitioner in the U.S. (if you're not using an attorney). If mail service from the U.S. has been at all unreliable where you live, or if you might be moving before your visa interview, it's safest to choose your petitioner as agent, and write in the U.S. address.

At the same time, if you're immigrating through a family member, the NVC will send that person a bill for processing the Affidavit of Support (Form I-864). (This is the form in which your family member promises to support you if necessary.) That person will need to pay the bill (currently \$70) for the process to continue.

After the NVC receives your Form DS-3032, it will send you a bill for the immigrant visa processing fee (currently \$355 plus a \$45 surcharge for security services). You *must* pay this by money order, not personal check. Make it out to the Department of State.



TIP

Got questions? The NVC is remarkably accessible for a government office—you can email them at NVCINQUIRY@state.gov, or call 603-334-0700 from 7:30 a.m. to midnight, Eastern time.

The NVC will also send instructions. Exactly what happens next will depend on which embassy you'll be interviewed at. One thing that's certain is that you and the petitioner will have to fill out

various forms and paperwork—the question is where you send them once you're done, and who you hear back from. (Don't worry about getting the forms. They'll either be sent to you by the NVC or you'll be told where to download them online.)

Some people will communicate mostly with the NVC—they'll be sending it not only their filled-out forms but various original documents, such as their original birth and marriage certificate—and they'll receive their appointment notice from the NVC. If you're one of these people, you may feel understandably nervous about sending in original documents. As long as you remember to also include a copy of the document, you'll get the original back when you go to your visa interview.

Other people will, after sending some paperwork to the NVC, communicate more with their consulate and receive their appointment notice directly from the consulate.

In either case, the important thing will be for you to follow the instructions carefully. Look again at the tips on filling out forms in Chapter 22.

If you make a mistake—for example you forget to send in a form or document, forget to sign one of the forms, or you enter inconsistent information on different forms—you'll normally get a second chance. The NVC will send you what's called a "checklist," setting out what you need to do and giving you a barcode sheet to include with your response. Again, read the instructions carefully and try to get it exactly right—every mistake you make delays your case and can eventually lead to the visa being denied.

B. Forms and Documents You'll Need to Provide

Here's a summary of the forms and documents that you'll need to give to either the NVC or the consulate between now and the end of the process:

- ❑ Form DS-2001, Notification of Applicant(s) Readiness. This is very short form, simply asking you to confirm that you've prepared the various documents (such as your passport, photographs, and evidence of financial support) on the checklist that's in your instruction packet.
- ❑ Form DS-230 Part I, Application for Immigrant Visa and Alien Registration. The first part of Form DS-230 asks for information about your family and personal history, your past and present residences, places of employment, and your membership in any organizations. Answer all questions as accurately as possible. (See the samples at the end of this chapter.)
- ❑ Copies of current passports. You'll probably be asked to send in a copy of the key pages of your family members' passports—but not the originals. You'll bring the original passports to your interview at the U.S. consulate.
- ❑ Birth certificates for you and for your spouse or children, with English translations.
- ❑ A police clearance certificate for each person over 16 years of age from every country in which the person has lived for more than six months.
- ❑ Marriage certificate, death certificate, divorce or annulment decree—whichever shows your current marital status and history.
- ❑ Military record of any service in your country, or any country, including certified proof of military service and of honorable or dishonorable discharge.
- ❑ Certified copy of court and prison records if you have been convicted of a crime.
- ❑ Evidence of your own assets, including titles or deeds to any real estate, condominium, or co-op apartment, or bank account statements to show that you are not destitute and will not be a financial burden to the U.S. government.
- ❑ If you are immigrating through a family petition, a job letter from your petitioner's employer in the United States that gives his or her work history and salary, and explains whether the employment is permanent (see the sample in Chapter 18).
- ❑ Form DS-230 Part II, Application for Immigrant Visa and Alien Registration (sworn statement). (See the sample at the end of this chapter.) Each applicant must submit one. After your interview, you must sign it in the presence of the U.S. consular officer.
- ❑ Form I-864 or I-864EZ, Affidavit of Support. (See the sample Form I-864 at the end of this chapter. Notice that in our sample, the sponsor didn't have enough income, and therefore had to add a Form I-864A in which his daughter, who lives with him, also promised to add her income to help the immigrant.) Which form you must submit depends on your situation. You must file Form I-864 if your petition is family-based (except K-1 fiancé visas). But if you are the only person that your petitioner is sponsoring, and your petitioner can meet the sponsorship requirements based upon his or her income alone, he or she can use a shorter version of the form, called I-864EZ. On both Form I-134 and I-864, a U.S. citizen or permanent resident promises to repay the U.S. government if you become impoverished and go on public assistance after you arrive in the United States.
- ❑ Documents to support form I-864. Your sponsor who fills out the form must also include financial documents, including the employer letter described above or other proof of income, his or her latest U.S. income tax returns and W-2s (or your sponsor can submit the last three years' returns, if it will strengthen the case), and bank statements or other proof of assets.

- ❑ Form I-864W (in cases where an I-864 is not required). In certain exceptional cases, a Form I-864 need not be filed. One of these is where the beneficiary is a child (adopted or natural born) who will become a U.S. citizen automatically upon entering the United States (see Chapter 11 for details). The other is where the beneficiary, or the beneficiary's spouse or parent, has worked 40 "quarters" (about ten years, as defined by the Social Security Administration) in the United States. If you're exempt from the affidavit of support requirement due to one of these exceptions, you should fill out Form I-864W instead of the regular Form I-864.

You will also be required to submit to fingerprinting, for a background check by the FBI and CIA. (See Chapter 22, Section F, for more about these security checks.)

The final set of documents you'll normally need to prepare for your interview include:

- ❑ Four color photographs, passport style.
- ❑ Current passports for you and for everyone in your family who is getting an immigrant visa (they must not expire earlier than six months after your interview date)
- ❑ Medical examination report. (Your interview packet will tell you where you must go to get a required medical examination. During that exam, your blood will be tested and you will be X-rayed. You may be barred from immigrating if these tests show that you have a contagious disease of public health concern such as AIDS or tuberculosis, or if you have a severe mental disorder.)
- ❑ U.S. income tax returns. If you have worked in the U.S. and intend to immigrate, you must present proof that you filed income tax returns for every year you worked.
- ❑ Visa fees, if not already paid. (The charge for a fiancé visa is \$131; the charge for an immigrant visa is \$400 in total.)



CAUTION

Unmarried children beware. If you are an unmarried son or daughter of a permanent resident or a U.S. citizen, and you marry before you have your immigration visa interview, be prepared for a shock: Your visa will be denied because you are no longer in the immediate relative or second preference category under which you were petitioned.

If you married after your visa interview but before you entered the U.S. with your immigrant visa, you may also be in serious trouble. Although you may be admitted into the United States (because USCIS has no way of knowing that you are no longer eligible), the agency could discover this fact if you later apply to bring your spouse or try to become a U.S. citizen.

It will not matter that you have been admitted as a permanent resident. Removal proceedings will be started against you, you and your spouse will not be reunited in the United States, and you will eventually have to go back to your country and start all over again in the preference category of the married son or daughter of a U.S. citizen. You could completely lose your immigrant eligibility if your parent is only a green card holder.

If you fall into this category, see an experienced attorney (Chapter 25 offers tips on finding one).

D. Attending Your Visa Interview

The final step in obtaining your visa is to attend an interview with a U.S. consular official. You'll receive written notification of your interview date; see the sample below. Until the date of your interview, it's quite possible that neither you nor your petitioning spouse or family members (if any) will have had any personal contact with any immigration official. At last, you can deal with a real human being—for better and for worse.

With all the paperwork you've submitted by now, you might wonder why the interview is even necessary. However, the government views the interview as its opportunity to confirm the contents of your application after you've sworn to

Sample Interview Appointment Notice



United States Department of State
National Visa Center
32 Rochester Avenue
Portsmouth, NH 03801-2909

September 10, 2007



EVADNE SOLOMOS
121 3rd STREET
BATON ROUGE, LA 70808

Dear Evadne Solomos :

The enclosed information pertains to Halimeda Adimidis's interest in immigrating to the United States of America. The National Visa Center (NVC) has completed its processing of Halimeda Adimidis's petition and forwarded it to the American Embassy/Consulate in Athens, Greece.

An immigrant visa interview has been scheduled for the applicant at the U.S. Embassy/Consulate in Athens, Greece on October 30, 2007 at 08:00 am.

Those members of the applicant's family, listed on the attached page, must appear at the U.S. Embassy/Consulate on the above appointment date. Please notify the Embassy/Consulate if the applicant cannot keep the appointment. The address is provided on the next page.

Please read and follow all Interview Preparation Instructions located on the Department of State's web site at http://travel.state.gov/visa/immigrants/info/info_1335.html.

Upon arrival at the Embassy/Consulate, the applicant should present this letter to the receptionist.

tell the truth. If you're applying based on marriage, it also allows them to ask personal questions designed to reveal whether your marriage is the real thing or a sham.

If you're being petitioned by a spouse or other family member, they're not required to attend the interview—but it's a good idea. After all, one of the main topics of discussion will be a form your family member filled out—the Affidavit of Support—showing his or her financial situation. If your family member can answer questions and confirm the contents of the affidavit in person, your case will be much stronger. And if yours is a marriage case, your spouse's willingness to travel and be with you at the interview is a good sign that your marriage is not a sham. Some, but not all, consulates also allow you to bring a lawyer, if you feel you need one.

To prepare for your interview, the most important thing is to review all your paperwork. Look at all the questions and answers on all the forms, including any that were submitted for you by your U.S. family member. Though boring, this information is all important to the consular officials. Be alert for any inconsistencies and mistakes, and bring along any documents that will help correct them.

If you're applying through a spouse or fiancé, spend some time with him or her reviewing the details of how you met, how you've corresponded and visited each other or each other's families, and when and why you decided to get married. If already married, review the details of the wedding—number of guests, where it was held, what food and drink was served, and the like.

If you don't live in the same city as the consulate, it's a good idea to get there a few days in advance, particularly for purposes of getting your medical exam and photos done. Arrive early, in case there's a line. Consulates often schedule applicants in large groups, telling them all to arrive at the same time. And be careful of personal security outside

the consulate—it's a common place for pickpockets and con artists to hang around. The interview itself will probably last 30 minutes.

Tips for the Interview

The most important thing to do is relax. Wear conservative but comfortable clothes. The interviewer will ask you mostly about information you have already given in response to questions on your immigration forms and other documents.

Answer all questions truthfully. If you cannot understand a question, be brave and ask for an interpreter. It is better to be embarrassed about not understanding English very well than to be denied your immigrant visa because you misunderstood the question.

E. Approval of Your Immigrant Visa

If everything is in order, if you have all the documents required, and if you are not inadmissible according to immigration law—you have no criminal record, terrorist affiliations or communicable disease, for example—your application for an immigrant visa will ultimately be approved.

However, unlike in the past, it won't be approved on the day of your interview. Even if your interview went great, the consulate needs to do some further processing. Most importantly, they'll need to wait for the results of your name check and security clearance from the FBI and other law enforcement agencies. This commonly takes between one and four months after your interview.

Different consulates notify you that your visa has been approved (or denied) in different ways. Some just post your case number online, and you have to check. Others call you by phone, or require that you give them a return mailer, and still others allow

you to email the consulate and ask. You'll find out at your interview what to expect.

You will be given a final document, your Immigrant Visa and Alien Registration, which bears your photograph and a stamp of approval. You will also be given your original Form DS-230, supporting documents, and your X-rays. You will carry all these documents with you during your trip to the United States and give them to immigration authorities when you arrive.

Your immigrant visa is valid for six months, and you must arrive in the United States within those six months.

If you are unable to leave for the United States and your visa is about to expire, you may apply for an extension of your immigrant visa by means of an affidavit, or written statement signed before a notary public, explaining why you are unable to leave on time. But unless you have a very good reason, the U.S. consulate will be reluctant to approve an extension.

F. Arriving in the United States

When you arrive at your U.S. port of entry, the U.S. citizens who were on the plane with you will be admitted in one line, while all the noncitizens will be queuing in another line.

When it is your turn, the immigration officer will take your immigrant documents and keep them—all but your X-rays—and make them part of your permanent record in the USCIS office. Your passport will be stamped to show that you have entered as a lawful permanent resident, and your Form I-94, Record of Arrival and Departure, will be stamped with an employment authorization, good for six months from your date of entry.

Your green card will be mailed to you within several weeks to months. You must inform USCIS if you change addresses, using Form AR-11, available in this book (but see the USCIS website for full instructions). You must tell them within ten days of your move or you can be deported. Besides, if you don't tell them, you may not receive your green card until you have made several trips to the USCIS office and filled out countless forms. See Chapter 24 for more information on keeping your right to a green card.

At last! You are now a bona fide immigrant—able to live and work legally in the United States. Welcome.

Choice of Address and Agent, Sample Form DS-3032

Make sure the address is complete and correct. We will use this address for future mailings.

OMB No. 1405-0126
EXPIRATION DATE: 12/31/2006
ESTIMATED BURDEN: 10 minutes*

Place Case Barcode Strip Here Before Mailing to the National Visa Center

U.S. Department of State
CHOICE OF ADDRESS AND AGENT
For Immigrant Visa Applicants

Print or Type your Full Name

Mancini _____ Terese _____ M _____
 (Last Name) (First Name) (MI.)

Check one box only to the left of the statement that is your choice.

☒ **I Appoint** Alberto Mancini 212-222-2121
 Telephone Number
as my agent or attorney to receive mail about my application. Mail from the U.S. Department of State concerning my immigrant visa application should be sent to:

Alberto Mancini 212-222-2121
 Name of the person who will act as your agent or attorney for receipt of mail Telephone Number
800 Broadway alberto@mancini.com
 Street Address (where my agent or attorney will receive mail about my application) *Email Address

Linderhurst NY 11757 USA
 City State/Province Postal Code Country

☐ **I do not appoint an agent or an attorney to receive mail about my application. Mail from the U.S. Department of State concerning my immigrant visa application should be sent to me at:**

 Street Address (Include "in care of" if Needed) *Email Address

 City State/Province Postal Code Country

☐ **I have already legally immigrated to the U.S. and do not need to apply for an immigrant visa. I received my Green Card through the _____ (City) USCIS office. My A# is _____.**

☐ **I no longer wish to apply for an immigrant visa.**

As proof of your choice, sign and date this document:

Terese M. Mancini 01/11/2008
 Signature of Applicant Date of Signature (mm-dd-yyyy)

PAPERWORK REDUCTION ACT

Public reporting burden for this collection of information is estimated to average 10 minutes per response. Persons are not required to provide this information in the absence of a valid OMB approval number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/ISS/DIR) Washington, DC 20520-1849.

*The Department is currently testing an electronic application system for nonimmigrant visa application that will allow electronic submission and eliminate paper forms. Once testing on this application system is completed the Department is examining whether or not the system can be used for the immigrant visa system.

Notification of Applicant(s) Readiness, Sample Form DS-2001 (page 1)

FORM DS-2001 It won't be possible to schedule your Immigrant Visa Appointment until you return this form signed along with the form DS-230 Part 1.



**CONSULATE GENERAL OF THE
UNITED STATES OF AMERICA**

Immigrant Visa Unit

Av. Pres. Wilson, 147 – Centro

Rio de Janeiro – RJ – 20030-020

Tel: 21-2292-7117 Fax: 21-2524-1972

www.consuladodoseua-rio.org.br

www.state.gov

Notification of Applicant(s) Readiness - Form DS-2001

Introduction You, or your agent, may notify United States Consulate listed above that you are ready for an interview by using this *DS-2001 form*. The form indicates that you and your family members (if applicable) have obtained all the necessary documents for the immigrant visa interview.
Note: Please read the *Instructions for the Immigrant Visa Applicants* before completing this form.

Document Requirements Please obtain the original documents or certified copies listed in the *Instructions for Immigrant Visa Applicants* form, from an appropriate authority for yourself and each family member who will accompany you to the United States. All documents that pertain to your petition are required, even if they were previously submitted to the INS with your petition.

Sample Form DS-2001 (page 2)

FORM DS-2001 It won't be possible to schedule your Immigrant Visa Appointment until you return this form signed along with the form DS-230 Part 1.

Signature

Please fill out the information below and sign.

ROM1234567899
(Case Number)

Terese Maria Mancini
(Complete Name-Please type or print)

108 Piazza d'Azeglio
Venice, Italy

(Mailing Address for Appointment Letter)

02/20/2008

(Date)
terese@mm.com

Beneficiary's e-mail address

764-290-7645

(Applicant's daytime phone number)

alberto@mancini.com

Petitioner's e-mail address

Sworn Statement:

I attest that I have all of the documents specified in the *Instructions for Immigrant Visa Applicants* which are applicable in my case, and I am prepared for immigrant visa interview.

Terese M. Mancini

(Applicant's signature – if minor, someone responsible for the minor should sign)

Where to send this form: Please send this form, along with DS-230 Part 1 (for each applicant), to the address of the United States Consulate listed in the heading of this letter.

Co/sep02

Application for Immigrant Visa and Alien Registration, Sample Form DS-230 Part I (page 1)

		U.S. Department of State APPLICATION FOR IMMIGRANT VISA AND ALIEN REGISTRATION		OMB APPROVAL NO. 1405-0015 EXPIRES: 09/30/2010 ESTIMATED BURDEN: 1 HOUR* (See Page 2)
PART I - BIOGRAPHIC DATA				
INSTRUCTIONS: Complete one copy of this form for yourself and each member of your family, regardless of age, who will immigrate with you. Please print or type your answers to all questions. Mark questions that are Not Applicable with "N/A". If there is insufficient room on the form, answer on a separate sheet using the same numbers that appear on the form. Attach any additional sheets to this form.				
WARNING: Any false statement or concealment of a material fact may result in your permanent exclusion from the United States.				
This form (DS-230 PART I) is the first of two parts. This part, together with Form DS-230 PART II, constitutes the complete Application for Immigrant Visa and Alien Registration.				
1. Family Name Mancini		First Name Tereze		Middle Name Maria
2. Other Names Used or Aliases (If married woman, give maiden name) Tereze Brabantio				
3. Full Name in Native Alphabet (If Roman letters not used) n/a				
4. Date of Birth (mm-dd-yyyy) 02/02/1975	5. Age 33	6. Place of Birth (City or town) (Province) (Country) Venice Italy		
7. Nationality (If dual national, give both) Italian	8. Gender ☐ Male ☒ Female	9. Marital Status ☐ Single (Never married) ☒ Married ☐ Widowed ☐ Divorced ☐ Separated Including my present marriage, I have been married <u>one</u> times.		
10. Permanent address in the United States where you intend to live, if known (street address including zip code). Include the name of a person who currently lives there. 800 Broadway Linderhurst, NY 11757 Telephone number: 212-222-2121		11. Address in the United States where you want your Permanent Resident Card (Green Card) mailed, if different from address in item #10 (include the name of a person who currently lives there). Telephone number:		
12. Your Present Occupation Freelance writer		13. Present Address (Street Address) (City or Town) (Province) (Country) 108 Piazza d'Azeglio Venice, Italy Telephone number: Home 764-290-7645 Office none		
14. Name of Spouse (Maiden or family name) Mancini		First Name Alberto		Middle Name Ilario
Date (mm-dd-yyyy) and place of birth of spouse: 03/30/1962, Los Angeles, CA				
Address of spouse (If different from your own): 800 Broadway Linderhurst, NY 11757				
Spouse's occupation: cook		Date of marriage (mm-dd-yyyy): 06/22/2007		
15. Father's Family Name Brabantio		First Name Francisco		Middle Name Noffo
16. Father's Date of Birth (mm-dd-yyyy) 08/02/1953	Place of Birth Venice, Italy	Current Address deceased	If deceased, give year of death 1989	
17. Mother's Family Name at Birth Gallo		First Name Magdalena		Middle Name Alcine
18. Mother's Date of Birth (mm-dd-yyyy) 04/24/1954	Place of Birth Venice, Italy	Current Address 90 Piazza d'Azeglio, Venice, Italy	If deceased, give year of death	
DS-230 Part I 10-2007 THIS FORM MAY BE OBTAINED FREE AT CONSULAR OFFICES OF THE UNITED STATES OF AMERICA Page 1 of 4 PREVIOUS EDITIONS OBSOLETE				

Affidavit of Support Under Section 213A of the Act, Sample Form I-864 (page 1)

OMB No. 1615-0075; Expires 10/31/10

Department of Homeland Security
U.S. Citizenship and Immigration Services**I-864, Affidavit of Support
Under Section 213A of the Act****Part 1. Basis for filing Affidavit of Support.**

1. I, Alberto Ilario Mancini,
am the sponsor submitting this affidavit of support because (Check only one box):
- a. ☒ I am the petitioner. I filed or am filing for the immigration of my relative.
- b. ☐ I filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____
- c. ☐ I have an ownership interest of at least 5 percent in _____, which filed an alien worker petition on behalf of the intending immigrant, who is related to me as my _____
- d. ☐ I am the only joint sponsor.
- e. ☐ I am the ☐ first ☐ second of two joint sponsors. (Check appropriate box.)
- f. ☐ The original petitioner is deceased. I am the substitute sponsor. I am the intending immigrant's _____.

**For Government
Use Only****This I-864 is from:**

- ☐ the Petitioner
- ☐ a Joint Sponsor # _____
- ☐ the Substitute Sponsor
- ☐ 5% Owner

This I-864:

- ☐ does not meet the requirements of section 213A.
- ☐ meets the requirements of section 213A.

Reviewer_____
Location_____
Date (mm/dd/yyyy)Number of Affidavits of
Support in file:☐ 1 ☐ 2**Part 2. Information on the principal immigrant.**2. Last Name ManciniFirst Name
TerezeMiddle Name
Maria

3. Mailing Address Street Number and Name (Include Apartment Number)

108 Piazza D'AzeglioCity
Venice

State/Province

Zip/Postal Code
99999Country
Italy4. Country of Citizenship
Italy5. Date of Birth (mm/dd/yyyy)
02/02/19756. Alien Registration Number (if any)
A- none7. U.S. Social Security Number (if any)
none**Part 3. Information on the immigrant(s) you are sponsoring.**

8. ☒ I am sponsoring the principal immigrant named in Part 2 above.
☒ Yes ☐ No (Applicable only in cases with two joint sponsors)
9. ☒ I am sponsoring the following family members immigrating at the same time or within six months of the principal immigrant named in **Part 2** above. Do not include any relative listed on a separate visa petition.

	Name	Relationship to Sponsored Immigrant	Date of Birth (mm/dd/yyyy)	A-Number (if any)	U.S. Social Security Number (if any)
a.	<u>Giovana Moreno</u>	<u>daughter</u>	<u>06/01/2003</u>	<u>none</u>	<u>none</u>
b.					
c.					
d.					
e.					

10. Enter the total number of immigrants you are sponsoring on this form from **Part 3**, Items 8 and 9.☐ 1 ☒ 2

Sample Form I-864 (page 2)

Part 4. Information on the Sponsor.			For Government Use Only
11. Name	Last Name Mancini		
	First Name Alberto	Middle Name Ilario	
12. Mailing Address	Street Number and Name (Include Apartment Number) 800 Broadway		
	City Lindenhurst	State or Province New York	
	Country U.S.	Zip/Postal Code 11757	
13. Place of Residence (if different from mailing address)	Street Number and Name (Include Apartment Number)		
	City	State or Province	
	Country	Zip/Postal Code	
14. Telephone Number (Include Area Code or Country and City Codes) 212-222-2121			
15. Country of Domicile U.S.			
16. Date of Birth (mm/dd/yyyy) 03/30/1962			
17. Place of Birth (City) Los Angeles	State or Province CA	Country U.S.	
18. U.S. Social Security Number (Required) 2 2 2-3 3-2 2 2 2			
19. Citizenship/Residency ☒ I am a U.S. citizen. ☐ I am a U.S. national (for joint sponsors only). ☐ I am a lawful permanent resident. My alien registration number is A- If you checked box (b), (c), (d), (e) or (f) in line 1 on Page 1, you must include proof of your citizen, national, or permanent resident status.			
20. Military Service (To be completed by petitioner sponsors only.) I am currently on active duty in the U.S. armed services. ☐ Yes ☒ No			

Sample Form I-864 (page 3)

Part 5. Sponsor's household size.**21. Your Household Size - DO NOT COUNT ANYONE TWICE*****Persons you are sponsoring in this affidavit:***

a. Enter the number you entered on line 10.

 2***Persons NOT sponsored in this affidavit:***

b. Yourself.

 1

c. If you are currently married, enter "1" for your spouse.

d. If you have dependent children, enter the number here.

e. If you have any other dependents, enter the number here.

f. If you have sponsored any other persons on an I-864 or I-864 EZ who are now lawful permanent residents, enter the number here.

 g. **OPTIONAL:** If you have siblings, parents, or adult children with the same principal residence who are combining their income with yours by submitting Form I-864A, enter the number here. 1h. Add together lines and enter the number here. **Household Size:** 4**Part 6. Sponsor's income and employment.****22. I am currently:**a. ☒ Employed as a/an cook.Name of Employer #1 (if applicable) Bob's Diner.

Name of Employer #2 (if applicable) _____.

b. ☐ Self-employed as a/an _____.c. ☐ Retired from _____ since _____.

(Company Name)

(Date)

d. ☐ Unemployed since _____.

(Date)

23. My current individual annual income is: \$ 20,000

(See Step-by-Step Instructions)

For Government
Use Only

Sample Form I-864 (page 5)

Part 7. Use of assets to supplement income. (Optional)		For Government Use Only
<i>If your income, or the total income for you and your household, from line 24c exceeds the Federal Poverty Guidelines for your household size, YOU ARE NOT REQUIRED to complete this Part. Skip to Part 8.</i>		Household Size = _____
26. Your assets (Optional) a. Enter the balance of all savings and checking accounts. \$ _____ b. Enter the net cash value of real-estate holdings. (Net means current assessed value minus mortgage debt.) \$ _____ c. Enter the net cash value of all stocks, bonds, certificates of deposit, and any other assets not already included in lines 26 (a) or (b). \$ _____ d. Add together lines 26 a, b and c and enter the number here. TOTAL: \$ _____		Poverty line for year _____ is: \$ _____
27. Your household member's assets from Form I-864A. (Optional) Assets from Form I-864A, line 12d for _____ \$ _____ (Name of Relative)		
28. Assets of the principal sponsored immigrant. (Optional) The principal sponsored immigrant is the person listed in line 2. a. Enter the balance of the sponsored immigrant's savings and checking accounts. \$ _____ b. Enter the net cash value of all the sponsored immigrant's real estate holdings. (Net means investment value minus mortgage debt.) \$ _____ c. Enter the current cash value of the sponsored immigrant's stocks, bonds, certificates of deposit, and other assets not included on line a or b. \$ _____ d. Add together lines 28a, b, and c, and enter the number here. \$ _____		
29. Total value of assets. Add together lines 26d, 27 and 28d and enter the number here. TOTAL: \$ _____		The total value of all assets, line 29, must equal 5 times (3 times for spouses and children of USCs, or 1 time for orphans to be formally adopted in the U.S.) the difference between the poverty guidelines and the sponsor's household income, line 24c.

Sample Form I-864 (page 6)**Part 8. Sponsor's Contract.**

Please note that, by signing this Form I-864, you agree to assume certain specific obligations under the Immigration and Nationality Act and other Federal laws. The following paragraphs describe those obligations. Please read the following information carefully before you sign the Form I-864. If you do not understand the obligations, you may wish to consult an attorney or accredited representative.

What is the Legal Effect of My Signing a Form I-864?

If you sign a Form I-864 on behalf of any person (called the "intending immigrant") who is applying for an immigrant visa or for adjustment of status to a permanent resident, and that intending immigrant submits the Form I-864 to the U.S. Government with his or her application for an immigrant visa or adjustment of status, under section 213A of the Immigration and Nationality Act these actions create a contract between you and the U. S. Government. The intending immigrant's becoming a permanent resident is the "consideration" for the contract.

Under this contract, you agree that, in deciding whether the intending immigrant can establish that he or she is not inadmissible to the United States as an alien likely to become a public charge, the U.S. Government can consider your income and assets to be available for the support of the intending immigrant.

What If I choose Not to Sign a Form I-864?

You cannot be made to sign a Form I-864 if you do not want to do so. But if you do not sign the Form I-864, the intending immigrant may not be able to become a permanent resident in the United States.

What Does Signing the Form I-864 Require Me to do?

If an intending immigrant becomes a permanent resident in the United States based on a Form I-864 that you have signed, then, until your obligations under the Form I-864 terminate, you must:

- Provide the intending immigrant any support necessary to maintain him or her at an income that is at least 125 percent of the Federal Poverty Guidelines for his or her household size (100 percent if you are the petitioning sponsor and are on active duty in the U.S. Armed Forces and the person is your husband, wife, unmarried child under 21 years old.)
- Notify USCIS of any change in your address, within 30 days of the change, by filing Form I-865.

What Other Consequences Are There?

If an intending immigrant becomes a permanent resident in the United States based on a Form I-864 that you have signed, then until your obligations under the Form I-864 terminate, your income and assets may be considered ("deemed") to be available to that person, in determining whether he or she is eligible for certain Federal means-tested public benefits and also for State or local means-tested public benefits, if the State or local government's rules provide for consideration ("deeming") of your income and assets as available to the person.

This provision does **not** apply to public benefits specified in section 403(c) of the Welfare Reform Act such as, but not limited to, emergency Medicaid, short-term, non-cash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; and means-tested programs under the Elementary and Secondary Education Act.

Contract continued on following page.

Sample Form I-864 (page 7)**What If I Do Not Fulfill My Obligations?**

If you do not provide sufficient support to the person who becomes a permanent resident based on the Form I-864 that you signed, that person may sue you for this support.

If a Federal, State or local agency, or a private agency provides any covered means-tested public benefit to the person who becomes a permanent resident based on the Form I-864 that you signed, the agency may ask you to reimburse them for the amount of the benefits they provided. If you do not make the reimbursement, the agency may sue you for the amount that the agency believes you owe.

If you are sued, and the court enters a judgment against you, the person or agency that sued you may use any legally permitted procedures for enforcing or collecting the judgment. You may also be required to pay the costs of collection, including attorney fees.

If you do not file a properly completed Form I-865 within 30 days of any change of address, USCIS may impose a civil fine for your failing to do so.

When Will These Obligations End?

Your obligations under a Form I-864 will end if the person who becomes a permanent resident based on a Form I-864 that you signed:

- Becomes a U.S. citizen;
- Has worked, or can be credited with, 40 quarters of coverage under the Social Security Act;
- No longer has lawful permanent resident status, and has departed the United States;
- Becomes subject to removal, but applies for and obtains in removal proceedings a new grant of adjustment of status, based on a new affidavit of support, if one is required; or
- Dies.

Note that divorce **does not** terminate your obligations under this Form I-864.

Your obligations under a Form I-864 also end if you die. Therefore, if you die, your Estate will not be required to take responsibility for the person's support after your death. Your Estate may, however, be responsible for any support that you owed before you died.

30. I, Alberto Ilario Mancini, _____,
(Print Sponsor's Name)

certify under penalty of perjury under the laws of the United States that:

- a. I know the contents of this affidavit of support that I signed.
- b. All the factual statements in this affidavit of support are true and correct.
- c. I have read and I understand each of the obligations described in Part 8, and I agree, freely and without any mental reservation or purpose of evasion, to accept each of those obligations in order to make it possible for the immigrants indicated in Part 3 to become permanent residents of the United States;
- d. I agree to submit to the personal jurisdiction of any Federal or State court that has subject matter jurisdiction of a lawsuit against me to enforce my obligations under this Form I-864;
- e. Each of the Federal income tax returns submitted in support of this affidavit are true copies, or are unaltered tax transcripts, of the tax returns I filed with the U.S. Internal Revenue Service; and

Sign on following page.

Sample Form I-864 (page 8)

- f. I authorize the Social Security Administration to release information about me in its records to the Department of State and U.S. Citizenship and Immigration Services.
- g. Any and all other evidence submitted is true and correct.

31. Alberto Nario Mancini
(Sponsor's Signature)

03/06/2008
(Date-- mm/dd/yyyy)

Part 9. Information on Preparer, if prepared by someone other than the sponsor.

I certify under penalty of perjury under the laws of the United States that I prepared this affidavit of support at the sponsor's request and that this affidavit of support is based on all information of which I have knowledge.

Signature: _____

Date: _____
(mm/dd/yyyy)

Printed Name: _____

Firm Name: _____

Address: _____

Telephone Number: _____

E-Mail Address : _____

Business State ID # (if any) _____

Attachment to Affidavit of Support

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-864P, Poverty Guidelines

2008 Poverty Guidelines*

Minimum Income Requirement for Use in Completing Form I-864.

For the 48 Contiguous States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands and Guam:

<u>Sponsor's Household Size</u>	<u>100% of Poverty Guidelines*</u> For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child.	<u>125% of Poverty Line</u> For all other sponsors
2	\$14,000	\$17,500
3	17,600	22,000
4	21,200	26,500
5	24,800	31,000
6	28,400	35,500
7	32,000	40,000
8	35,600	44,500
	Add \$3,600 for each additional person.	Add \$4,500 for each additional person.

For Alaska:

For Hawaii:

<u>Sponsor's Household Size</u>	<u>100% of Poverty Line</u> For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child	<u>125% of Poverty Line</u> For all other sponsors	<u>100% of Poverty Line</u> For sponsors on active duty in the U.S. Armed Forces who are petitioning for their spouse or child	<u>125% of Poverty Line</u> For all other sponsors
2	\$17,500	\$21,875	\$16,100	\$20,125
3	22,000	27,500	20,240	25,300
4	26,500	33,125	24,380	30,475
5	31,000	38,750	28,520	35,650
6	35,500	44,375	32,660	40,825
7	40,000	50,000	36,800	46,000
8	44,500	55,625	40,940	51,175
	Add \$4,500 for each additional person	Add \$5,625 for each additional person.	Add \$4,140 for each additional person.	Add \$5,175 for each additional person.

Means -Tested Public Benefits.

Federal Means-Tested Public Benefits. To date, Federal agencies administering benefit programs have determined that Federal means-tested public benefits include Food Stamps, Medicaid, Supplemental Security Income (SSI), Temporary Assistance for Needy Families (TANF) and the State Child Health Insurance Program (SCHIP).

State Means-Tested Public Benefits. Each State will determine which, if any, of its public benefits are means-tested. If a State determines that it has programs which meet this definition, it is encouraged to provide notice to the public on which programs are included. Check with the State public assistance office to determine which, if any, State assistance programs have been determined to be State means-tested public benefits.

Programs Not Included: The following Federal and State programs are **not** included as means-tested benefits: emergency Medicaid; short-term, non-cash emergency relief; services provided under the National School Lunch and Child Nutrition Acts; immunizations and testing and treatment for communicable diseases; student assistance under the Higher Education Act and the Public Health Service Act; certain forms of foster-care or adoption assistance under the Social Security Act; Head Start Programs; means-tested programs under the Elementary and Secondary Education Act; and Job Training Partnership Act programs.

* These poverty guidelines remain in effect for use with Form I-864, Affidavit of Support, from March 1, 2008 until new poverty guidelines go into effect in the spring of 2009.

Contract Between Sponsor and Household Member, Sample Form I-864A (page 1)

OMB No. 1615-0075; Expires 10/31/10

Department of Homeland Security
U.S. Citizenship and Immigration Services**I-864A, Contract Between
Sponsor and Household Member****Part 1. Information on the Household Member. (You.)****For Government
Use Only**

1. Name	Last Name Mancini		
	First Name Beatrice	Middle Name Stella	
2. Mailing Address	Street Number and Name (include apartment number) 800 Broadway		
	City Lindenhurst	State or Province New York	
	Country U.S.	Zip/Postal Code 11757	
3. Place of Residence (if different from mailing address)	Street Number and Name (include apartment number)		
	City	State or Province	
	Country	Zip/Postal Code	
4. Telephone Number	(Include area code or country and city codes) 212-222-2121		
5. Date of Birth	(mm/dd/yyyy) 03/06/1982		
6. Place of Birth	City Horseheads	State/Province NY	Country U.S.
	7. U.S. Social Security Number (if any) 206-45-9872		

**This I-864A relates to
a household member
who:**☐ is the intending
immigrant.☐ is not the intending
immigrant._____
Reviewer_____
Location_____
Date (mm/dd/yyyy)**8. Relationship to Sponsor** (Check either a, b or c)

- a. ☐ I am the intending immigrant and also the sponsor's spouse.
- b. ☐ I am the intending immigrant and also a member of the sponsor's household.
- c. ☒ I am not the intending immigrant. I am the sponsor's household member. I am related to the sponsor as his/her.
- ☐ Spouse
- ☒ Son or daughter (at least 18 years old)
- ☐ Parent
- ☐ Brother or sister
- ☐ Other dependent (specify)

Form I-864A (Rev.10/18/07)Y

Form I-864A (Rev.10/18/07)Y Page 2

Sample Form I-864A (page 3)

Part 2. Sponsor's Promise.				For Government Use Only
13. I, THE SPONSOR, <u>Alberto Ilario Mancini</u> (Print Name) in consideration of the household member's promise to support the following intending immigrant(s) and to be jointly and severally liable for any obligations I incur under the affidavit of support, promise to complete and file an affidavit of support on behalf of the following <u>2</u> named intending (Indicate Number) immigrant(s) (see Step-by-Step instructions).				
Name	Date of Birth (mm/dd/yyyy)	A-number (if any)	U.S. Social Security Number (if any)	
a. Terese M. Mancini	02/15/1975	none	none	
b. Giovana Moreno	06/01/2003	none	none	
c.				
d.				
e.				
14. <u>Alberto I. Mancini</u> (Sponsor's Signature) <u>03/06/2008</u> (Date--mm/dd/yyyy)				
Part 3. Household Member's Promise.				
15. I, THE HOUSEHOLD MEMBER, <u>Beatrice Stella Mancini</u> (Print Name) in consideration of the sponsor's promise to complete and file an affidavit of support on behalf of the above <u>2</u> named intending immigrant(s): (Number from line 13)				
a. Promise to provide any and all financial support necessary to assist the sponsor in maintaining the sponsored immigrant(s) at or above the minimum income provided for in section 213A(a)(1)(A) of the Act (not less than 125 percent of the Federal Poverty Guidelines) during the period in which the affidavit of support is enforceable;				
b. Agree to be jointly and severally liable for payment of any and all obligations owed by the sponsor under the affidavit of support to the sponsored immigrant(s), to any agency of the Federal Government, to any agency of a State or local government, or to any other private entity that provides means-tested public benefit;				
c. Certify under penalty under the laws of the United States that all the information provided on this form is true and correct to the best of my knowledge and belief and that the Federal income tax returns submitted in support of the contract are true copies or unaltered tax transcripts filed with the Internal Revenue Service.				
d. Consideration where the household member is also the sponsored immigrant: I understand that if I am the sponsored immigrant and a member of the sponsor's household that this promise relates only to my promise to be jointly and severally liable for any obligation owed by the sponsor under the affidavit of support to any of my dependents, to any agency of the Federal Government, to any agency of a State or local government, and to provide any and all financial support necessary to assist the sponsor in maintaining any of my dependents at or above the minimum income provided for in section 213A(s)(1)(A) of the Act (not less than 125 percent of the Federal poverty line) during the period which the affidavit of support is enforceable.				
e. I authorize the Social Security Administration to release information about me in its records to the Department of State and U.S. Citizenship and Immigration Services.				
16. <u>Beatrice Stella Mancini</u> (Household Member's Signature) <u>03/06/2008</u> (Date--mm/dd/yyyy)				

Application for Immigrant Visa and Alien Registration, Sample Form DS-230 Part II (page 1)



U.S. Department of State
**APPLICATION FOR IMMIGRANT VISA AND
 ALIEN REGISTRATION**

OMB APPROVAL NO. 1405-0015
 EXPIRES: 07/31/2007
 ESTIMATED BURDEN: 1 HOUR*

PART II - SWORN STATEMENT

INSTRUCTIONS: Complete one copy of this form for yourself and each member of your family, regardless of age, who will immigrate with you. Please print or type your answers to all questions. Mark questions that are **Not Applicable** with "N/A". If there is insufficient room on the form, answer on a separate sheet using the same numbers that appear on the form. Attach any additional sheets to this form. The fee should be paid in United States dollars or local currency equivalent, or by bank draft.

WARNING: Any false statement or concealment of a material fact may result in your permanent exclusion from the United States. Even if you are issued an immigrant visa and are subsequently admitted to the United States, providing false information on this form could be grounds for your prosecution and/or deportation.

This form (DS-230 PART II), together with Form DS-230 PART I, constitutes the complete Application for Immigrant Visa and Alien Registration.

26. Family Name	First Name	Middle Name
Mancini	Terese	Maria
27. Other Names Used or Aliases (If married woman, give maiden name)		
Terese Brabantio		
28. Full Name in Native Alphabet (If Roman letters not used)		
n/a		
29. Name and Address of Petitioner		
Alberto Mancini 800 Broadway Lindenhurst, NY 11757		
Telephone number:		(212) 222-2121
30. United States laws governing the issuance of visas require each applicant to state whether or not he or she is a member of any class of individuals excluded from admission into the United States. The excludable classes are described below in general terms. You should read carefully the following list and answer YES or NO to each category. The answers you give will assist the consular officer to reach a decision on your eligibility to receive a visa.		
EXCEPT AS OTHERWISE PROVIDED BY LAW, ALIENS WITHIN THE FOLLOWING CLASSIFICATIONS ARE INELIGIBLE TO RECEIVE A VISA. DO ANY OF THE FOLLOWING CLASSES APPLY TO YOU?		
a. An alien who has a communicable disease of public health significance; who has failed to present documentation of having received vaccinations in accordance with U.S. law; who has or has had a physical or mental disorder that poses or is likely to pose a threat to the safety or welfare of the alien or others; or who is a drug abuser or addict.		☐ Yes ☒ No
b. An alien convicted of, or who admits having committed, a crime involving moral turpitude or violation of any law relating to a controlled substance or who is the spouse, son or daughter of such a trafficker who knowingly has benefited from the trafficking activities in the past five years; who has been convicted of 2 or more offenses for which the aggregate sentences were 5 years or more; who is coming to the United States to engage in prostitution or commercialized vice or who has engaged in prostitution or procuring within the past 10 years; who is or has been an illicit trafficker in any controlled substance; who has committed a serious criminal offense in the United States and who has asserted immunity from prosecution; who, while serving as a foreign government official and within the previous 24-month period, was responsible for or directly carried out particularly severe violations of religious freedom; or whom the President has identified as a person who plays a significant role in a severe form of trafficking in persons, who otherwise has knowingly aided, abetted, assisted or colluded with such a trafficker in severe forms of trafficking in persons, or who is the spouse, son or daughter of such a trafficker who knowingly has benefited from the trafficking activities within the past five years.		☐ Yes ☒ No
c. An alien who seeks to enter the United States to engage in espionage, sabotage, export control violations, terrorist activities, the overthrow of the Government of the United States or other unlawful activity; who is a member of or affiliated with the Communist or other totalitarian party; who participated in Nazi persecutions or genocide; who has engaged in genocide; or who is a member or representative of a terrorist organization as currently designated by the U.S. Secretary of State.		☐ Yes ☒ No
d. An alien who is likely to become a public charge.		☐ Yes ☒ No
e. An alien who seeks to enter for the purpose of performing skilled or unskilled labor who has not been certified by the Secretary of Labor; who is a graduate of a foreign medical school seeking to perform medical services who has not passed the NBME exam or its equivalent; or who is a health care worker seeking to perform such work without a certificate from the CGFNS or from an equivalent approved independent credentialing organization.		☐ Yes ☒ No
f. An alien who failed to attend a hearing on deportation or inadmissibility within the last 5 years; who seeks or has sought a visa, entry into the United States, or any immigration benefit by fraud or misrepresentation; who knowingly assisted any other alien to enter or try to enter the United States in violation of law; who, after November 30, 1996, attended in student (F) visa status a U.S. public elementary school or who attended a U.S. public secondary school without reimbursing the school; or who is subject to a civil penalty under INA 274C.		☐ Yes ☒ No

Privacy Act and Paperwork Reduction Act Statements

The information asked for on this form is requested pursuant to Section 222 of the Immigration and Nationality Act. The U.S. Department of State uses the facts you provide on this form primarily to determine your classification and eligibility for a U.S. immigrant visa. Individuals who fail to submit this form or who do not provide all the requested information may be denied a U.S. immigrant visa. If you are issued an immigrant visa and are subsequently admitted to the United States as an immigrant, the Department of Homeland Security will use the information on this form to issue you a Permanent Resident Card, and, if you so indicate, the Social Security Administration will use the information to issue you a social security number and card.

*Public reporting burden for this collection of information is estimated to average 1 hour per response, including time required for searching existing data sources, gathering the necessary data, providing the information required, and reviewing the final collection. In accordance with 5 CFR 1320.5(b), persons are not required to respond to the collection of this information unless this form displays a currently valid OMB control number. Send comments on the accuracy of this estimate of the burden and recommendations for reducing it to: U.S. Department of State (A/RPS/DIR) Washington, DC 20520.

Sample Form DS-230 Part II (page 2)

g. An alien who is permanently ineligible for U.S. citizenship; or who departed the United States to evade military service in time of war. ☐ Yes ☒ No h. An alien who was previously ordered removed within the last 5 years or ordered removed a second time within the last 20 years; who was previously unlawfully present and ordered removed within the last 10 years or ordered removed a second time within the last 20 years; who was convicted of an aggravated felony and ordered removed; who was previously unlawfully present in the United States for more than 180 days but less than one year who voluntarily departed within the last 3 years; or who was unlawfully present for more than one year or an aggregate of one year within the last 10 years. ☐ Yes ☒ No i. An alien who is coming to the United States to practice polygamy; who withholds custody of a U.S. citizen child outside the United States from a person granted legal custody by a U.S. court or intentionally assists another person to do so; who has voted in the United States in violation of any law or regulation; or who renounced U.S. citizenship to avoid taxation. ☐ Yes ☒ No j. An alien who is a former exchange visitor who has not fulfilled the 2-year foreign residence requirement. ☐ Yes ☒ No k. An alien determined by the Attorney General to have knowingly made a frivolous application for asylum. ☐ Yes ☒ No l. An alien who has ordered, carried out or materially assisted in extrajudicial and political killings and other acts of violence against the Haitian people; who has directly or indirectly assisted or supported any of the groups in Colombia known as FARC, ELN, or AUC; who through abuse of a governmental or political position has converted for personal gain, confiscated or expropriated property in Cuba, a claim to which is owned by a national of the United States, has trafficked in such property or has been complicit in such conversion, has committed similar acts in another country, or is the spouse, minor child or agent of an alien who has committed such acts; who has been directly involved in the establishment or enforcement of population controls forcing a woman to undergo an abortion against her free choice or a man or a woman to undergo sterilization against his or her free choice; or who has disclosed or trafficked in confidential U.S. business information obtained in connection with U.S. participation in the Chemical Weapons Convention or is the spouse, minor child or agent of such a person. ☐ Yes ☒ No				
31. Have you ever been charged, arrested or convicted of any offense or crime? (If answer is Yes, please explain) ☐ Yes ☒ No				
32. Have you ever been refused admission to the United States at a port-of-entry? (If answer is Yes, please explain) ☐ Yes ☒ No				
33a. Have you ever applied for a Social Security Number (SSN)? ☐ Yes Give the number _____ ☒ No Do you want the Social Security Administration to assign you an SSN (and issue a card) or issue you a new card (if you have an SSN)? You must answer "Yes" to this question and to the "Consent To Disclosure" in order to receive an SSN and/or card. ☒ Yes ☐ No	33b. CONSENT TO DISCLOSURE: I authorize disclosure of information from this form to the Department of Homeland Security (DHS), the Social Security Administration (SSA), such other U.S. Government agencies as may be required for the purpose of assigning me an SSN and issuing me a Social Security card, and I authorize the SSA to share my SSN with the INS. ☒ Yes ☐ No The applicant's response does not limit or restrict the Government's ability to obtain his or her SSN, or other information on this form, for enforcement or other purposes as authorized by law.			
34. WERE YOU ASSISTED IN COMPLETING THIS APPLICATION? ☐ Yes ☒ No (If answer is Yes, give name and address of person assisting you, indicating whether relative, friend, travel agent, attorney, or other)				
DO NOT WRITE BELOW THE FOLLOWING LINE The consular officer will assist you in answering item 35. DO NOT SIGN this form until instructed to do so by the consular officer				
35. I claim to be: <table style="width: 100%;"> <tr> <td style="width: 33%; vertical-align: top;"> ☐ A Family-Sponsored Immigrant ☐ An Employment-Based Immigrant ☐ A Diversity Immigrant ☐ A Special Category (Specify) _____ <i>(Returning resident, Hong Kong, Tibetan, Private Legislation, etc.)</i> </td> <td style="width: 33%; vertical-align: top;"> ☐ I derive foreign state chargeability under Sec. 202(b) through my _____ </td> <td style="width: 33%; vertical-align: top;"> ☐ Preference: _____ ☐ Numerical limitation: _____ <i>(foreign state)</i> </td> </tr> </table>		☐ A Family-Sponsored Immigrant ☐ An Employment-Based Immigrant ☐ A Diversity Immigrant ☐ A Special Category (Specify) _____ <i>(Returning resident, Hong Kong, Tibetan, Private Legislation, etc.)</i>	☐ I derive foreign state chargeability under Sec. 202(b) through my _____	☐ Preference: _____ ☐ Numerical limitation: _____ <i>(foreign state)</i>
☐ A Family-Sponsored Immigrant ☐ An Employment-Based Immigrant ☐ A Diversity Immigrant ☐ A Special Category (Specify) _____ <i>(Returning resident, Hong Kong, Tibetan, Private Legislation, etc.)</i>	☐ I derive foreign state chargeability under Sec. 202(b) through my _____	☐ Preference: _____ ☐ Numerical limitation: _____ <i>(foreign state)</i>		
I understand that I am required to surrender my visa to the United States Immigration Officer at the place where I apply to enter the United States, and that the possession of a visa does not entitle me to enter the United States if at that time I am found to be inadmissible under the immigration laws. I understand that any willfully false or misleading statement or willful concealment of a material fact made by me herein may subject me to permanent exclusion from the United States and, if I am admitted to the United States, may subject me to criminal prosecution and/or deportation. I, the undersigned applicant for a United States immigrant visa, do solemnly swear (or affirm) that all statements which appear in this application, consisting of Form DS-230 Part I and Part II combined, have been made by me, including the answers to items 1 through 35 inclusive, and that they are true and complete to the best of my knowledge and belief. I do further swear (or affirm) that, if admitted into the United States, I will not engage in activities which would be prejudicial to the public interest, or endanger the welfare, safety, or security of the United States; in activities which would be prohibited by the laws of the United States relating to espionage, sabotage, public disorder, or in other activities subversive to the national security; in any activity a purpose of which is the opposition to or the control, or overthrow of, the Government of the United States, by force, violence, or other unconstitutional means. I understand that completion of this form by persons required by law to register with the Selective Service System (males 18 through 25 years of age) constitutes such registration in accordance with the Military Selective Service Act. I understand all the foregoing statements, having asked for and obtained an explanation on every point which was not clear to me.				
_____ Signature of Applicant				
Subscribed and sworn to before me this _____ day of _____ at: _____				
_____ Consular Officer				

Private Bills

A. What Is a Private Bill?.....	266
B. How a Private Bill Is Passed	266

You may have heard of people who became permanent residents by means of a private bill passed by the U.S. Congress. However, such cases are rare. You must have very special circumstances—and very strong political ties—to get a private bill passed.

Look into the possibility of a private bill where the law is against you, but your case has strong humanitarian factors. Private bills succeed when an injustice can be corrected only by a special act of the U.S. Congress.

A. What Is a Private Bill?

A private bill is the last resort of a desperate alien facing removal (deportation)—a special urging by high-level U.S. politicians to allow you to stay in the U.S. legally. Currently, very few private bills are filed on behalf of aliens. Fewer than 100 private bills have been successful during each of the past several years.

B. How a Private Bill Is Passed

A private bill must be sponsored by one or more members of the House of Representatives and one or more members of the Senate who urge that one individual be given special consideration in being allowed to become a permanent resident or get citizenship.

Like a law, a private bill has to be introduced in both houses of Congress. It then has to be recommended favorably by the Judiciary Committee to which it has been assigned in both houses, after having been favorably reported on by the Subcommittee on Immigration of both houses.

Both houses of Congress must approve the bill during a regular session. The president of the United States must then sign it into law.

Thus, if you are an alien facing deportation, you will have to go through the eye of a needle before getting your private bill passed by Congress and signed by the president. In short, hiring the best immigration lawyer in town will give you a better chance to obtain a green card than will the private bill route. ●

Acquiring Citizenship Through U.S. Citizen Parents

A. Who Qualifies for Acquisition of Citizenship.....	268
1. Birth Prior to May 24, 1934.....	268
2. Birth Between May 25, 1934, and January 12, 1941.....	269
3. Birth Between January 13, 1941, and December 23, 1952	269
4. Birth Between December 24, 1952, and November 13, 1986	270
5. Birth Between November 14, 1986, and the Present.....	270
6. Exception to Requirements for Retaining Citizenship.....	270
B. Obtaining Proof of U.S. Citizenship.....	270
1. U.S. Passport.....	271
2. Certificate of Citizenship.....	271
3. Certificate of Consular Registration of Birth.....	271
C. Dual Citizenship	271

Okay, we know it's unlikely, but every so often someone struggling to qualify for a U.S. green card discovers that he or she was a U.S. citizen all along. How? Because the person's parents or even grandparents held U.S. citizenship at the time of the person's birth in another country. This is called "acquisition" of citizenship. This chapter will describe who qualifies for acquisition of citizenship, how to prove you're a U.S. citizen, and how to figure out whether you qualify for dual citizenship (simultaneous citizenship in the United States and your home country).



RESOURCE

This book does not describe how people who have already gotten their green card can apply to become naturalized citizens. For complete information on your eligibility and the application process, see [*Becoming a U.S. Citizen: A Guide to the Law, Exam & Interview*](#), by Ilona Bray (Nolo).

What If You Were Born "Out of Wedlock" to a U.S. Citizen Father?

In many cases, your right to U.S. citizenship may depend on your relationship to a U.S. citizen father. However, if your parents weren't married at the time you were born, the laws of the time may refer to you as "illegitimate," meaning in legal terms that you have no recognized father. As you'll see in the sections below, your right to claim citizenship may depend on you providing evidence that your father took the actions necessary to satisfy the legitimation law of your birth country. Legitimation laws require fathers to legally acknowledge their children.

A. Who Qualifies for Acquisition of Citizenship

In many circumstances, even though a child is born outside the U.S., if at least one parent was a U.S. citizen at the time of the child's birth, he or she automatically "acquires" U.S. citizenship. When this child marries and has children, those children may also acquire U.S. citizenship at birth.

The laws governing whether or not a child born outside U.S. boundaries acquires U.S. citizenship from his or her parents have changed several times. The law that was in effect on the date of the child's birth determines whether he or she acquired U.S. citizenship from a parent or grandparent. If there is anyone in your direct line of ancestry whom you believe may be a U.S. citizen, it is worth your time to read what the U.S. laws were on the date of your birth and that of your ancestor.

Most laws controlling the passing of U.S. citizenship from parent to child require that the parent, the child, or both have a period of living in the United States ("residence"). Sometimes the residence is required to be for a specified length of time (for example, five years) and sometimes it is not. When the law doesn't say exactly how long the residence period must be, you can assume that even a brief time, such as a month, might be enough. The key element is often not the amount of time but whether or not USCIS or the State Department believes it was a residence and not a visit. If the period of stay has the character of a residence, the length of time doesn't matter.

1. Birth Prior to May 24, 1934

If you were born before May 24, 1934, the law provided that only your U.S. citizen father (not mother) could pass citizenship on to you. The rules were very simple. In order to pass on U.S. citizenship, the father must have resided in the U.S. at some time before the child's birth. The law didn't require any particular length of time or dates

when the residence took place. Technically, a day or a week would be enough if it could be regarded as a residence and not just a visit. Once a child obtained U.S. citizenship at birth through a U.S. citizen father, there were no conditions to retaining it. These rules also applied to so-called illegitimate children (children born to unmarried parents), provided the U.S. citizen father had at some time legally legitimated the child (acknowledged his paternal responsibility). U.S. citizenship was then acquired at the time of legitimation, without regard to the child's age.

This law has been challenged several times as discriminatory, with some courts holding that citizenship could also be passed by the mother to the children. Congress finally addressed this issue in 1994 and amended the law, retroactively, to provide that either parent could pass his or her U.S. citizenship to children.

Consider that if you were born before May 24, 1934, and either of your parents was a U.S. citizen, that citizenship might have been passed on to you. Consider also that if either of your parents was born before May 24, 1934, they may have acquired U.S. citizenship from either of their parents, which they then passed on to you under laws in existence at a later date. A check of the family tree may well be worth your while.

2. Birth Between May 25, 1934, and January 12, 1941

If you were born between May 25, 1934, and January 12, 1941, you acquired U.S. citizenship at birth on the conditions that both your parents were U.S. citizens and at least one had resided in the U.S. prior to your birth. The law at this time placed no additional conditions on retaining U.S. citizenship acquired in this way.

You could also get U.S. citizenship if only one of your parents was a U.S. citizen, as long as that parent had a prior U.S. residence. If your U.S. citizenship came from only one parent, you too

would have been required to reside in the U.S. for at least two years between the ages of 14 and 28 in order to retain the citizenship you got at birth. Alternately, you could retain citizenship if your non-citizen parent naturalized before you turned 18 and you began living in the U.S. permanently before age 18. Otherwise, your citizenship would be lost. If the one U.S. citizen parent was your father and your birth was illegitimate (took place while your parents weren't married), the same rules applied provided your father legally legitimated you (acknowledged paternal responsibility). Citizenship was passed at the time of legitimation without regard to your age, as long as you had met the retention requirements.

3. Birth Between January 13, 1941, and December 23, 1952

If you were born between January 13, 1941, and December 23, 1952, both your parents were U.S. citizens, and at least one had a prior residence in the U.S., you automatically acquired U.S. citizenship at birth, with no conditions to retaining it.

If only one parent was a U.S. citizen, that parent must have resided in the U.S. for at least ten years prior to your birth, and at least five of those years must have been after your parent reached the age of 16. With a parent thus qualified, you then acquired U.S. citizenship at birth, but with conditions for retaining it. To keep your citizenship, you must have resided in the U.S. for at least two years between the ages of 14 and 28. Alternately, you could retain citizenship if your non-citizen parent naturalized before you turned 18 and you began living in the U.S. permanently before age 18. As a result of a U.S. Supreme Court decision, if you were born after October 9, 1952, your parent still had to fulfill the residence requirement in order to confer citizenship on you, but your own residence requirements for retaining U.S. citizenship were abolished—you need not have lived in the U.S. at all.

If your one U.S. citizen parent was your father and your birth was illegitimate (took place while your parents weren't married), the same rules applied provided you were legally legitimated (your father acknowledged paternal responsibility) prior to your 21st birthday and you were unmarried at the time of legitimation.

4. Birth Between December 24, 1952, and November 13, 1986

If at the time of your birth both your parents were U.S. citizens and at least one had a prior residence in the U.S., you automatically acquired U.S. citizenship, with no other conditions for retaining it.

If only one parent was a U.S. citizen at the time of your birth, that parent must have resided in the U.S. for at least ten years, and at least five of those years must have been after your parent reached the age of 14. If your one U.S. citizen parent is your father and your birth was illegitimate (took place while your parents weren't married), the same rules apply provided you were legally legitimated (your father acknowledged paternal responsibility) prior to your 21st birthday and you were unmarried at the time of legitimation.

5. Birth Between November 14, 1986, and the Present

If at the time of your birth both your parents were U.S. citizens and at least one had a prior residence in the U.S., you automatically acquired U.S. citizenship, with no conditions for retaining it.

If only one parent was a U.S. citizen at the time of your birth, that parent must have resided in the U.S. for at least five years and at least two of those years must have been after your parent reached the age of 14. Even with only one U.S. citizen parent, there are still no conditions to retaining your citizenship. If your one U.S. citizen parent is your father and your birth was illegitimate (took place while your parents weren't married), the same

rules apply provided you were legally legitimated (your father acknowledged paternal responsibility) prior to your 18th birthday. Additionally, your father must have established paternity prior to your 18th birthday either by acknowledgment or by court order, and must have stated, in writing, that he would support you financially until your 18th birthday.

6. Exception to Requirements for Retaining Citizenship

It is not unusual for a child born and raised outside the U.S. to have acquired U.S. citizenship at birth from parents or grandparents without knowing it. The child, ignorant of the laws and circumstances affecting his or her birthright, then proceeds to lose U.S. citizenship by failing to fulfill U.S. residency requirements.

Congress sought to address this by adding a law for people who once held U.S. citizenship but lost it by failing to fulfill the residency requirements that were in effect before 1978. Such persons can regain their citizenship by simply taking the oath of allegiance to the United States. It is not necessary that the person apply for naturalization. Contact a U.S. consulate or USCIS office for more information. The relevant statute is 8 U.S.C. § 1435(d)(1), I.N.A. § 324(d)(1).

B. Obtaining Proof of U.S. Citizenship

If you have a legitimate claim to U.S. citizenship, in order to establish that claim you must apply for some kind of citizenship document; either a:

- U.S. passport
- certificate of citizenship, or
- certificate of consular registration of birth.

1. U.S. Passport

If you were born abroad to U.S. citizen parents, you can apply for a U.S. passport in the same way as someone born in the United States. However, you will have the added requirement of establishing your citizenship claim. Passports are available from passport offices in the U.S. (run by the U.S. Department of State) and at U.S. consulates outside the U.S., but experience shows that you have a better chance at a U.S. consulate. Wherever you apply, you will be required to present proof of your parents' U.S. citizenship and evidence that they, and you, complied with any applicable U.S. residency requirements. Review the sections on birth to a U.S. citizen for what you must prove under these circumstances. You will need to present documents such as birth or citizenship records of your parent or grandparent and work or tax records establishing U.S. residency for your parent or grandparent.

2. Certificate of Citizenship

Certificates of citizenship are issued only inside the U.S. by USCIS offices. Anyone with a claim to U.S. citizenship can apply for a certificate of citizenship. In most cases it is more difficult and takes much longer to get a certificate of citizenship than a U.S. passport.

Certificates of citizenship must be applied for on Form N-600. The current fee is \$460. Copies of the form and detailed instructions are available on the USCIS website, www.uscis.gov.

We recommend that you also prepare a cover letter explaining the basis of your claim to U.S. citizenship and describing the documents you are offering as proof. These should include your parents' birth certificates, marriage certificate, and citizenship or naturalization certificates. You should also present your own birth certificate, as well as marriage certificates and any divorce decrees to

show legal changes in your name since birth. Your letter should also list whatever evidence you will be presenting to show that you have met any residency requirements as described in this chapter.

Form N-600, the documents, and the cover letter should be submitted to the USCIS local office having jurisdiction over your place of residence. You will most likely be called in for an interview on your application. In the busier USCIS offices, it can take up to a year to get a decision on an application for certificate of citizenship.

3. Certificate of Consular Registration of Birth

Your parents may have registered your birth with a U.S. consulate to establish your right to U.S. citizenship and create an official birth record. If so, the consulate may have created a certificate of consular registration, which would provide conclusive proof that you are a U.S. citizen. However, your parents would have had to register your birth at a consulate within five years after you were born. And, if you didn't keep a copy made by the consulate, you can't get another one now.

C. Dual Citizenship

Whenever a child is born to U.S. citizen parents but the birth takes place outside U.S. territory, the child may acquire dual citizenship. In this situation, the child will, depending on the laws of the country where the birth took place, usually have the nationality of the country in which he or she was actually born, in addition to U.S. citizenship through the nationality of the parents. U.S. law recognizes dual citizenship under these circumstances, and if you have acquired dual citizenship in this manner, under U.S. law you will be entitled to maintain dual status for your lifetime. ●

Filling Out and Submitting Immigration Applications

A. Don't Give False Answers	274
1. Criminal Penalties.....	274
2. Civil Penalties.....	274
B. Get the Latest Forms and Fee Amounts.....	274
C. Tips for Filling Out Forms	275
1. Your Family Name.....	275
2. Your Address.....	275
3. Your Social Security and Alien Registration Numbers.....	276
D. When Additional Proof Is Required	276
1. Proving a Family Relationship.....	276
2. Proving an INS or USCIS Approval.....	278
3. Proving U.S. Citizenship	278
4. Proving U.S. Lawful Permanent Residence	279
E. Submitting Photographs for Identification.....	279
1. The Photographs.....	280
2. Your Image Within the Photo	280
F. Fingerprinting Requirements.....	280
G. Keep Your Own File.....	281
H. Tips for Filing Applications.....	281
1. Submitting Applications by Mail or Courier	281
2. Some Applications Can Be Filed Online ("e-Filing").....	283
3. Faster, "Premium" Processing May Become Available.....	283
4. Always Use Your Alien Number	283
5. Use One Check for Each Filing Fee	284
6. Looking at Your File	284

The most important part of obtaining a green card is the paperwork. The key to getting one is to pay very close attention to the immigration forms and other documents you submit as evidence to the U.S. government.

A. Don't Give False Answers

There is one primary rule to keep in mind while answering the questions on the immigration forms: Honesty Is the Best Policy.

For example, if you have been previously married, admit this and provide the documents to prove that your previous marriage ended by divorce, annulment, or the death of your spouse.

If you have children by a previous marriage, or you have had any children while you were unmarried, list all of them on the immigration form, together with their correct names and dates of birth as shown on their birth certificates.

If the immigration form requests such information, be sure to list all your brothers and sisters, whether they are full-blood siblings, half-siblings, or stepbrothers or stepsisters.

Once you submit the immigration forms, it is very difficult to change your answers. If you attempt later changes, you run the risk of having your petition denied.

EXAMPLE:

Suppose you never told your American husband that you had an illegitimate child. For this reason, you do not mention this child in your immigration papers. Later on, you decide to reveal the truth to your husband. If you want to petition for an immigrant visa for the child you left behind in your country, you will have a hard time convincing USCIS that you had a child prior to your marriage.

1. Criminal Penalties

Lying or failing to mention things on your immigration paperwork can have consequences beyond your immigration case. You also run the risk of being prosecuted criminally for obtaining entry by a “willfully false or misleading representation or willful concealment of a material fact.” This can also affect U.S. citizens or permanent residents who file petitions for an immigrant.

If you are found guilty of committing these offenses, you may be imprisoned for as long as five years or fined as much as \$10,000, or receive both forms of punishment. If you received your green card by a fraudulent marriage, the punishment is more severe.

2. Civil Penalties

There are also civil (non-criminal) penalties for those who “forge, counterfeit, alter, or falsely make any document” to satisfy a requirement of immigration law.

If you are found guilty, you can be fined \$250 to \$5,000 for each fraudulent document that you have in your possession or have already submitted to USCIS. In addition, if you are an alien, you may be excluded from entering the United States or, if you are already there, you may be removed or deported.

B. Get the Latest Forms and Fee Amounts

The law and the rules on immigration procedures change frequently. Using old, outdated forms may cause your immigration petition to be delayed or, worse, denied. And if your immigration papers are filed with the wrong fee, they will be returned; this will further delay your legal entry as an immigrant.

Therefore, before mailing any immigration applications, take the time to request the most

recent forms and to double check the filing fees with the local USCIS office, at www.uscis.gov, or with an American consulate in your country of residence, whichever is most convenient.

You must pay the fees by personal check or money order, made out to the Department of Homeland Security. Don't send cash!

C. Tips for Filling Out Forms

A number of immigration forms ask for the same kinds of identifying information—your name, address, identification numbers. While the answers may often seem obvious, USCIS requires that they be phrased in specific ways.

1. Your Family Name

When an immigration form asks you to fill in your name, write the complete name that you were given on your birth certificate or the name written in your passport, to match whichever document is required. Add your full middle name (if you have one), even if the form asks only for your middle initial. USCIS asks all applicants to add this for security check purposes, and it may delay your application if you don't.

If the name on your birth certificate is not your name at present, explain the difference in a letter and submit the corresponding court papers or other documents that show the change.

EXAMPLE:

If you are a woman named Jane and you're using the surname of your husband, John Smith, as your family name, write your husband's surname—that is, Jane Smith.

On the space that says "other names used," write your maiden name and any other names you have used—that is, Jane Doe.

If you were married previously, write your previous married name on that space. Attach your marriage certificate or divorce decree.

Answer Every Question

Answer all questions and do not leave a line on the form blank unless clearly directed to do otherwise. If the question being posed does not apply to you, write "not applicable" ("N/A") or, if you do not have a number or document, write "none." If you do not know the answer, write "not known."

What's the difference between "not applicable" and "none?" There is one, and it's important that you get it right. If, for example, a form asks for "other names used," and you've never used another name, you'd write "none." That's because the question applies to you, just like it does to everyone. Entering "not applicable" or "N/A" is appropriate only if there's a question like "Have you ever been married?" and you answer "no," followed by another question asking the "date of marriage." You can answer "N/A" to "date of marriage," because that question is truly irrelevant and doesn't apply to your situation.

If you fail to answer all questions, processing of your forms is likely to be delayed while USCIS sends them back and asks for more complete information.

2. Your Address

Your address, as far as USCIS is concerned, is the place where you receive mail. The post office is very important in your immigration relationship because everything from USCIS will come by mail—notice of approval of petition, notice of incomplete submission, notice of interview, notice of proceedings, and your green card.

If the mail carrier does not deliver mail in your locality, rent a post office box. However, some USCIS forms ask not only for your mailing address but also for your actual address. In that case, write the exact address or location of your home or indicate c/o—meaning "in care of"—if another person at that address will be receiving your mail.

3. Your Social Security and Alien Registration Numbers

The Social Security number requested on immigration forms is issued by the U.S. government, not by your country's own Social Security administration. You should have one only if you've lived in the U.S. and had a legal right to work there.

An alien registration number, also called your "A#," is issued by USCIS (or, formerly, the INS). If you have not been assigned one or both of these numbers, write "none" in the space provided on the immigration forms.

D. When Additional Proof Is Required

USCIS requires specific proof to be submitted along with the answers on many of its forms. This is because you are entitled to a green card only when you can prove by convincing documentation that you meet specific qualifications. You can go a long way toward eliminating delays and confusion if you take the time to make sure your additional proof is accurate and complete.

1. Proving a Family Relationship

As requested on the immigration forms, you must provide copies of documents to prove that a relationship permits you to apply as a family-based immigrant. If you do not submit the right documents, your materials will be returned and the whole process will be delayed.

You must have the official documents. To prove a family relationship, you must have the original birth certificate, marriage certificate, or death certificate issued by the civil registry of your country with the official government seal, stamp, or ribbon attached, depending on how official documents are marked in your country. Nongovernmental documents, such as church

Using the Department of State Documents Finder

Ever wonder how to get a birth certificate in Belarus or a divorce certificate in Djibouti? Go to <http://travel.state.gov/visa/reciprocity/index.htm> and find out. This tremendously helpful website tells you how to get documents you need for immigration cases (like proof of military service or lack of a police record) or replace documents you thought you had but can't lay your hands on. If you really can't get a certain document (such as a birth certificate), the website will give you suggestions on alternatives.

or hospital certificates, are usually not sufficient. Although you won't mail the originals in, you'll probably be asked to show them to USCIS at your interview.

Use your fingers to verify the indentation of the government seal that is embossed or pressed into the paper. USCIS will often assume that a document without such a seal is fraudulent.

If you have lost the documents, you can request certified copies from your government for an additional charge. Be sure these copies also have the official government seal.

Because some unscrupulous people create counterfeit documents, USCIS has to carefully examine the documents presented.

You must write or type the following statement on the back of each photocopy:

Copies of documents submitted are exact photocopies of unaltered original documents, and I understand that I may be required to submit original documents to an immigration or consular official at a later date.

Include your signature and the date. There is no need to have your signature verified by a notary public.

Do Not Send Your Originals

Make a copy of your original document—and send the copy to USCIS. Things often get lost in the mail. And added to that, the USCIS offices are busy places crowded with many people and even more documents, so things can get lost there, too. USCIS often makes no effort to return originals to you, and takes no responsibility if they are lost. Keep the originals of your documents in a safe place—one that's fireproof if possible. Then show them to the consular or USCIS officer at your interview.

If you don't have the official document. Sometimes, you cannot get your original documents because of war, destruction of the civil registry, your government's prohibition on emigration, or simple oversight or ignorance.

In such cases, family relationships such as parent-child, brother-sister, or husband-wife can be proved by what is called secondary evidence—a combination of documents that may not come from the civil registry, but which nevertheless prove a relationship.

- Church records, for example, can sometimes be submitted. A baptismal certificate will show the parents' names and the date and place of birth of the child.
- Annotations in a family Bible, old letters, school records, or data from a relevant government census are other types of secondary evidence.
- USCIS may also accept the sworn statements, or affidavits, of two people who have witnessed your birth, your marriage, the death of a spouse, or whatever event you need to prove. The statement should include the witnesses' names and addresses, their relationship to you or your family, and why and how they know about the alleged event. The strongest evidence

is from witnesses who were present at the event you need to prove.

For example, if you've never had a birth certificate or you could not obtain a copy, a sworn statement written by your sister could read as the sample below.

Sample Sworn Statement

My name is Jane Doe, and I am the older sister of John Doe.

I live at 123 Middle Abbey Street, Dublin, Ireland.

I was seven years old when my brother, John Doe, was born to our mother, Carolyn Doe, on July 4, 1930, at our home in Cork, Ireland. I remember the midwife coming to our house and I was sent outside to play. After it got dark, my brother was born and they called me inside to see him.

This affidavit is submitted because the civil registry in Cork was burned in 1932 and my brother's birth certificate was lost when the family moved to Dublin in the same year.

Signature: _____

Signed and sworn to before me on March 1, 20xx
[Notary Stamp]

The witnesses have to swear to the truth of their statements before a notary public—a person who is authorized by the state to verify signatures. You can find a notary by looking in the telephone book, although most banks have one on staff. Most notaries will charge for their services, so it may be worthwhile to shop around for the one with the most reasonable fee. If required by the U.S. embassy in your country, the affidavits may have to be sworn to before the U.S. consular official, who will also charge a fee for the service.

You may need to submit your own affidavit stating why you cannot obtain the original documents and what efforts you have made to try to do so.

USCIS may further investigate your family relationship, or request that you and your relative undergo blood tests or give additional testimony. An investigation may even be conducted in the neighborhood in which you lived in your native country.

Before it confers an immigration benefit, the U.S. government must be certain that the person immigrating is truly the child, brother, sister, husband, or wife—and not the niece, nephew, aunt, uncle, cousin, or friend—of the U.S. citizen or permanent resident petitioner.

Documents in Languages Other Than English

If the documents you are submitting are not in English, have them translated accurately. An English summary of the main points in the document is not enough. However, you do not have to hire a professional translator to do the job. Somebody who has competent knowledge of both English and the language in which the documents are written should be able to do the translation.

The translator must attach the following statement to the translated document and sign and date it:

I hereby certify that I am competent to translate this document from [the foreign language] to English and that this translation is accurate and complete to the best of my knowledge and ability.

2. Proving an INS or USCIS Approval

In some situations, you may have an application or petition that has been approved by the USCIS (formerly named INS) but need further action because:

- you lost the approval notice or you need a duplicate
- the U.S. embassy or consulate that originally received the approval notice closed down or you simply could not go to your home country, and another U.S. consulate is willing to process your immigration visa and needs to be officially notified, or
- you need USCIS to notify the U.S. consulate in your country that you became a green card holder in the United States so that your spouse and children can receive visas to join you.

In any of these circumstances, you must file Form I-824, Application for Action on an Approved Application or Petition, with the USCIS office that approved the original application or petition. The filing fee was \$340 at the time this book went to print.

If you have a copy of the approval, make a copy of that and send or bring it to the USCIS office to help in locating your case.

3. Proving U.S. Citizenship

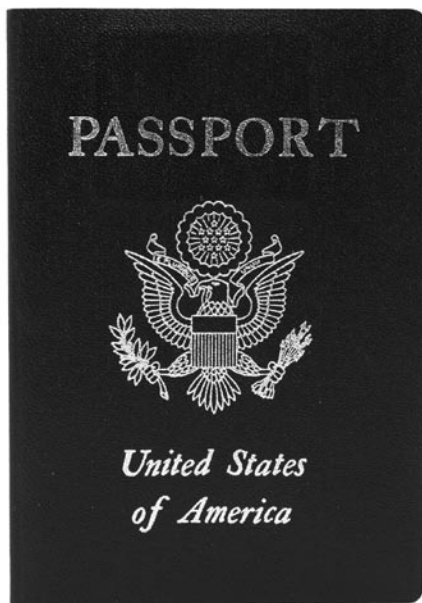
A U.S. citizen has the right to bestow permanent resident status on a spouse, parent, child, brother, sister, fiancée or fiancé, and widow or widower. But USCIS must first see documents proving the person's U.S. citizenship.

The following are accepted as proof:

- a birth certificate showing the place of birth to be any of the 50 U.S. states, Puerto Rico, the U.S. Virgin Islands, or Guam
- a valid U.S. passport
- a baptismal certificate with the seal of the church showing the place of birth and date of baptism, which must have occurred within two months after birth, if the birth certificate cannot be obtained
- affidavits of two U.S. citizens who have personal knowledge of the petitioner's birth in the United States, if neither the birth nor the baptismal certificate can be obtained

- a certificate of naturalization, if the person became a citizen by naturalization and needs to file a petition for a relative within 90 days of the date of naturalization
- Department of State Form FS-240, Report of Birth Abroad of a Citizen of the United States, which proves U.S. citizenship for someone born abroad, and
- a certificate of citizenship issued by the INS or USCIS, which is also adequate proof that someone is a U.S. citizen born abroad.

U.S. Passport



4. Proving U.S. Lawful Permanent Residence

As a green card holder, you have the right to petition for your spouse and unmarried children, by submitting proof that you are a permanent resident. Although USCIS has your file and alien registration number in its records, you must still present your green card, or submit a copy of it if you are sending your immigration papers by mail.

The official name of your green card is a Permanent Resident Card (also sometimes called Form I-551). Only the Form I-551 will be recognized as proof of lawful permanent residence.

If your green card is lost or not available, your passport—bearing the USCIS rubber stamp showing lawful admission for permanent residence and your alien registration number—is acceptable proof of your permanent resident status.

E. Submitting Photographs for Identification

Because good, accurate photographs are essential to ensure that a person is correctly represented for immigration purposes, the USCIS has imposed a number of strict specifications for the photographs and the poses it will accept. Essentially, it's the same style as required for U.S. passports.

While it is not essential to hire a professional photographer to take USCIS photos, it may be tough to comply with the picky requirements for size, lighting, clarity, and digital resolution. If you or a friend attempt to take the photos on your own, be sure to take many pictures and to read the requirements first. Vending machine photos won't be accepted.

If, as is normally the case, you're asked to submit more than one photo, the photos must be identical—you can't just take a few photos that look quite similar and submit them.



RESOURCE

Want more detail on the photo requirements? Visit the State Department website at www.travel.state.gov. Click "more" under "Passports for U.S. Citizens," then "Guide for Professional Photographers" (scroll down the left-hand column).

1. The Photographs

The overall size of the picture, including the background, must be at least 50 mm (2 inches) square.

The photographs must be in color—with no shadows, marks or discolorations on them. The background must be white or off-white; it is not acceptable to be photographed against a patterned or colored background. There must be good lighting; the photo must not appear too light or too dark. And the final image must be original, not retouched in any way.

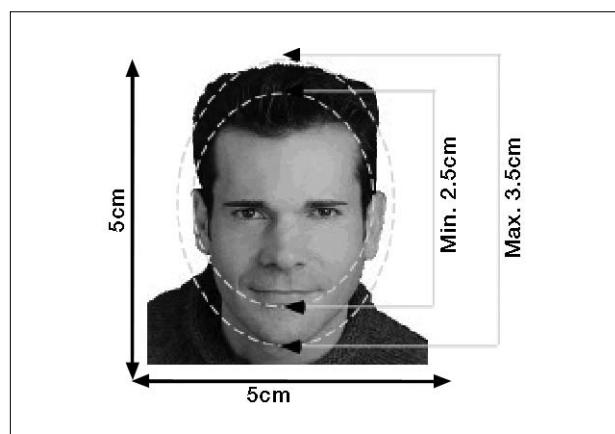
2. Your Image Within the Photo

The image on the photo—total size of the head—must be 25 to 35 mm (1 inch to 1³/₈ inches) from the top of the hair to the bottom of the chin.

Your eyes must be between 1¹/₈ inches to 1³/₈ inches (28 mm and 35 mm) from the bottom of the photo.

Your face should be pictured from the front, with eyes open. Be sure not to wear jewelry or hats—unless the headwear is required by your religion. Your facial expression should be natural—smiling is not necessary. It's okay to wear glasses if you do so every day.

Photos must be taken within six months of submitting them.



Before You Put Anything in the Mail

Whenever possible, it is best to file immigration papers personally, in case there are questions about your answers or your documents. However, most applications can be filed only by mail. Before mailing any immigration documents, make copies for your own records.

Submit your papers using certified mail, return receipt requested. This way, you will get confirmation that your papers were received.

F. Fingerprinting Requirements

USCIS requires fingerprinting (also called “biometrics”) to accompany a variety of applications, including permanent residence, asylum, and naturalization, among others. Fingerprints are generally reviewed by the FBI and CIA to determine an applicant’s actual identity and to determine whether the person has a criminal background that would make him or her inadmissible. USCIS will also check to see whether you’ve submitted previous applications under a different name.

If the application you are filing requires biometrics, you should include a fee (currently \$80, check or money order) made out to USCIS for the cost. This is in addition to any fees for the application itself.

USCIS will usually contact you within 90 days by letter, telling you when you should go to a USCIS-authorized site for fingerprinting. You will be given directions and a specific week within which you must appear.

If you cannot make it during your appointed time, you can ask to be rescheduled. At some locations, USCIS is also developing mobile fingerprinting vans that will make it easier for people who live outside major urban areas to comply with the fingerprinting requirements.

If you live abroad and are filing your application outside the United States, you may be fingerprinted at a U.S. consulate or military installation. The fee is \$85.

G. Keep Your Own File

For your own records, make copies of everything that you submit to the U.S. government, including the immigration forms and the supporting documents. Also make a copy of the receipt USCIS issues to you after you pay any filing fee.

Keep your own copies and original documents in a safe place. You will need them again when you are called to receive your immigrant visa at the U.S. embassy or when you attend your personal interview for your green card at USCIS.

Also, like any other bureaucracy, USCIS does sometimes misplace files. It will save you a lot of headache and heartache if you can show that you have already filed the application with USCIS by presenting a copy of the documents filed, the receipt from USCIS, and your certified check or money order.

H. Tips for Filing Applications

USCIS loses a surprising number of applications, or the documents and checks that came with them. To protect yours, and to make sure they get through the system as smoothly as possible, follow the tips below.

1. Submitting Applications by Mail or Courier

After you've filled out your application forms, assembled the needed documents, and written the checks, you'll be eager to submit everything to USCIS. Most applications must be submitted by mail. But don't just pop yours in the nearest mailbox. Take all applications and other immigra-

tion papers to the post office, and send them by certified mail with return receipt requested. Keep complete copies for your files—even copy the checks.

Sending your application via couriers such as FedEx or DHL is also a good way to make sure you have proof of its arrival. However, make sure the USCIS office is equipped to accept this form of delivery. Some never do, because a live person has to be there to sign for the package. Others designate a special address for such deliveries, which you can find on the USCIS website (www.uscis.gov).

When your application arrives at a USCIS office, the clerical staff will first examine your papers to see if everything is in order. Your papers will likely be returned to you if you:

- did not enter your full name, including middle name
- did not sign your application or other papers requiring a signature
- signed a name different from that shown on your attached birth certificate
- did not enclose the correct filing fee
- left some questions unanswered, or
- forgot to include some documents.

When your papers are returned, there should be a letter included with them, telling you what information was incorrect or missing. You will usually have a chance to correct what was wrong and send back your documents and check or money order.

When your documents are in order, USCIS will accept your submission and will send you a receipt notice similar to the sample shown below.

If your application needs to be submitted in person—such as an application for employment authorization or advance parole—the USCIS worker to whom you are assigned will tell you whether or not your application is properly filled out and documented. You will have the opportunity to correct your answers right then and

Sample Receipt Notice

Department of Homeland Security
U.S. Citizenship and Immigration Services

I-797C, Notice of Action



RECEIPT NUMBER WAC-05-041-00000		CASE TYPE I129F PETITION FOR FIANC(E)
RECEIVED DATE November 30, 2006	PRIORITY DATE	PETITIONER BEACH, SANDRA
NOTICE DATE December 1, 2006	PAGE 1 of 1	BENEFICIARY HOLLIS, NIGEL
ILONA BRAY RE: NIGEL IAN HOLLIS 950 PARKER ST. BERKELEY, CA 94710		Notice Type: Receipt Notice Amount received: \$ 165.00

Receipt notice - If any of the above information is incorrect, call customer service immediately.

Processing time - Processing times vary by kind of case.

- You can check our current processing time for this kind of case on our website at uscis.gov.
- On our website you can also sign up to get free e-mail updates as we complete key processing steps on this case.
- Most of the time your case is pending the processing status will not change because we will be working on others filed earlier.
- We will notify you by mail when we make a decision on this case, or if we need something from you.
- If you move while this case is pending, call customer service when you move.
- Processing times can change. If you don't get a decision or update from us within our current processing time, check our website or call for an update.

If you have questions, check our website or call customer service. Please save this notice, and have it with you if you contact us about this case.

Notice to all customers with a pending I-130 petition - USCIS is now processing Form I-130, Petition for Alien Relative, as a visa number becomes available. Filing and approval of an I-130 relative petition is only the first step in helping a relative immigrate to the United States. Eligible family members must wait until there is a visa number available before they can apply for an immigrant visa or adjustment of status to a lawful permanent resident. This process will allow USCIS to concentrate resources first on cases where visas are actually available. This process should not delay the ability of one's relative to apply for an immigrant visa or adjustment of status. Refer to www.state.gov/travel <<http://www.state.gov/travel>> to determine current visa availability dates. For more information, please visit our website at www.uscis.gov or contact us at 1-800-375-5283.

Always remember to call customer service if you move while your case is pending. If you have a pending I-130 relative petition, also call customer service if you should decide to withdraw your petition or if you become a U.S. citizen.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

IMMIGRATION & NATURALIZATION SERVICE
CALIFORNIA SERVICE CENTER
P. O. BOX 30111
LAGUNA NIGUEL CA 92607-0111
Customer Service Telephone: (800) 375-5283



there. The USCIS worker will then direct you to pay the filing fee to the cashier, who will give you a receipt. Be sure to keep the receipt in case you need to use it as proof of filing.



CAUTION

If you move, take extra precautions. As you may know, all changes of address must be reported to a central USCIS office within ten days, using Form AR-11. However, if you've got an application going through the USCIS system, this is just the beginning. You must also tell whichever office is handling your application about your new address, or it won't find out. (Send a letter.) But don't count on your letter making its way into your file—USCIS is notoriously bad about keeping track of these things. Ask the U.S. post office to forward your mail, and if possible, stay in touch with the new people living in your old house or apartment to see whether anything from USCIS has arrived.

Some people even postpone moves until after their cases are finished processing! This might seem extreme, but if your or your loved one's immigration situation is the most important thing in your life, it's worth considering. Experienced immigration lawyers will tell you that anytime a file has to go from one USCIS field office to another (as is often the case when you move), bad things can happen, from unanticipated and lengthy delays to filings that "disappear" in the system. If you know you are going to move in the coming weeks or months and you have a case you want to file, consider waiting until after you have moved before filing the case.

2. Some Applications Can Be Filed Online ("e-Filing")

USCIS recently instituted an e-filing program for some (but not all) petitions and applications. USCIS says that the benefits of e-filing include your being able to file petitions and applications from anywhere with an Internet connection, pay your fees with a credit card or directly through your checking or savings account, and get immediate confirmation that your application has been received by USCIS.

However, the program as it currently exists is somewhat cumbersome—for example, you must still mail photocopies of documents such as birth certificates and passports. And USCIS says it can't refund payments made by mistake, for example if you accidentally submit a payment twice. USCIS promises that the program will improve over time. If you're a procrastinator, or you worry about whether every "i" has been dotted and "t" crossed in your paperwork, you might especially appreciate the "instant confirmation" feature of e-filing. More information about e-filing is available at www.uscis.gov/graphics/formsfee/forms/eFiling.htm.

3. Faster, "Premium" Processing May Become Available

With USCIS's Premium Processing Service, 15-calendar day processing is available to people filing certain applications who are willing to pay the premium processing fee (currently \$1,000). Unfortunately, only a few kinds of cases are currently eligible for premium processing, and none of them are covered in this book. (It's mainly available for petitions by companies on behalf of important workers.) However, USCIS has plans to make the service more widely available in the future.

Not only do premium processing cases get sent to special mailing addresses, but dedicated phone numbers and email addresses are available for use solely by premium processing customers. Requests for premium processing are filed using Form I-907.

More information about premium processing—including the latest news on which types of applications it's available for—can be found at www.uscis.gov/premiumprocessing.

4. Always Use Your Alien Number

There are two kinds of numbers by which the Department of Homeland Security identifies every person who comes in contact with it. The first

one, an A followed by 8 numbers—for example: A93 465 345—is given to those who apply for adjustment of status to become permanent residents (see Chapter 18) or who have a removal case. It's called an "Alien Registration Number" or "A Number."

The second type of number USCIS assigns starts with the initials of your district or Regional Service Center followed by ten numbers—for example: WSC 1122334455 or EAC 9512345678—and is given to applications submitted there, to track them through processing.

Once your immigration papers are accepted by USCIS, its computer system verifies whether you have ever been assigned an alien number or whether the alien number you wrote on your application is the right one for you.

The clerk then checks the computer files, looking for all the names you may have used, your date and place of birth, and your parents' names. The clerk will confirm the alien number you wrote on your application, or if you have other alien numbers previously assigned, will note them on your application so that all your files can be consolidated under one alien number. If you do not have a previous alien number, the clerk will give your file a new one.

Keep a record of your immigration case number, because any time you pose a question to USCIS, it will ask you first for your number. And if you send letters—for example, asking why your case is taking so long—you must include your A number or processing number.

5. Use One Check for Each Filing Fee

Occasionally, you may find yourself submitting more than one petition or application at the same time. For example, in a marriage case where your

spouse is here in the U.S., you can file Form I-130 and Form I-485 simultaneously. Or, you may file applications for your spouse and your stepchild in the same envelope. In any of these situations, resist the temptation to combine all the filing fees into a single check.

If you submit separate, individual checks for each filing fee, then if you make a mistake on the check (for example, you forget to sign it, or you make it for the wrong amount), USCIS will reject only the filing that is affected by that check. But if you submit a single check covering all fees, and you've made a mistake, you will ruin all of the filings at once.

It's a pain to have to write more than one check for forms and applications being submitted in the same package, but most of the time it's worth it.

6. Looking at Your File

If you need to see your immigration records, or to have a copy of a document you submitted, you can do so by filing Form G-639, Freedom of Information/Privacy Act Request. Request a current form from the nearest USCIS office or download it from the USCIS website (www.uscis.gov). Mark your envelope "Freedom of Information Request." Send it to the following address: National Records Center, FOIA/PA Office, P.O. Box 648010, Lee's Summit, MO 64064-8010.

Although USCIS has promised that it will answer a Freedom of Information/Privacy Act Request within ten days, it usually does not live up to its promise. If you have not heard from USCIS within one month after requesting to see your file, write and let them know that you are aware that it has a mandate to respond to these requests within ten days. ●

Tracking Your Application Through the System

A. Understanding the USCIS Culture	286
B. Where to Go	287
C. Inquiring About Delays	288
D. Speeding Up Processing in Emergencies.....	290
E. Reporting Wrongdoing.....	291

All too often, when you submit an application to U.S. Citizenship and Immigration Services (formerly called the INS), you expect to receive an official reply within a week or two. But a month may pass, then two—and still no reply arrives. You would like to find out why your application is delayed, but each time you contact the USCIS office, you are simply told to be patient and wait—that your paperwork is “being processed,” or “pending.”

But there are a number of things you can do to be sure that your dealings with USCIS move as smoothly and efficiently as possible. Those options are explained in this chapter.

A. Understanding the USCIS Culture

USCIS is just one branch of a huge agency, the Department of Homeland Security (DHS). The people working in USCIS reflect the workforce of any other government bureaucracy. These workers can generally be divided into two kinds: those who are earnest and conscientious in doing their jobs, and those who are at their posts in body but not in spirit. You take the luck of the draw as to which kind of bureaucrat will be handling your application or answering your questions.

Although USCIS is governed by law (the Immigration and Nationality Act, Code of Federal Regulations, and Operational Instructions), how these controlling rules and laws are applied depends upon USCIS office workers, who have their own cultural and social biases.

For example, you may be confronted with an immigration officer who is anti-immigrant, and who detests dealing on a daily basis with people who do not speak English, who speak

with an accent, or who look, dress, or even smell differently from what he or she thinks of as “ordinary” Americans. This bias may make the worker grumpy, officious, intimidating, unhelpful, unreasonable, discourteous, or downright infuriating.

Furthermore, USCIS is not very phone-accessible, and the people at its national information line aren’t well-informed about local office procedures. Some of them may give you wrong information.

Visiting USCIS Offices in Person

The only USCIS offices that you can visit in person are the district or field offices. Each U.S. state usually has one or two such offices (though in a few cases, you’ll have to travel to another state). To find the office that serves you, go to www.uscis.gov and click on “Services and Benefits,” then on “Field Offices.”

It used to be a major headache to visit a USCIS field office in person. To ask even a simple question about a form or a pending case, you often had to line up very early in the morning and wait half a day just to be seen by an officer. Nowadays, however, the USCIS InfoPass system allows you to go to <http://infopass.uscis.gov> and make an appointment. The appointment system is very slick—it can communicate in 12 different languages—and appointments are usually scheduled within a few days or weeks of the request. Best of all, you don’t have to show up at USCIS until a few minutes before your appointment, and USCIS says that most visits last less than an hour! But be sure to use a computer with a printer when making the appointment—you’ll need a printout of your appointment notice when you go.

B. Where to Go

If you're actually at a USCIS office and you feel an immigration officer is being unreasonable, go up the chain of command and appeal to the worker's supervisor. Insist on speaking with the supervisor personally. You can even do this in the middle of an appointment or interview. If that's not possible, try to obtain the supervisor's telephone number and call and explain what happened—or write a detailed letter. Be clear on what action was taken by the worker and what you want the supervising officer to do.

Because the DHS is a bureaucracy with many departments and branches, it is easy to get mixed up in a game of finger-pointing in which each person with whom you speak claims that the problem is not his or her fault.

The most important bit of knowledge you can learn is the exact section where your application is pending and where you need to be directing your inquiry.

- The USCIS District or Field Office is open to the public for forms and information and also handles green card interviews. Most states have at least one.
- The USCIS Regional Service Center is a processing facility that you cannot normally visit, but to which you may be required to send certain applications. There are four service centers nationwide. You can check on the status of applications that you've filed with the service centers by telephone (see the phone number on your receipt notice) or online at <https://egov.uscis.gov/cris/jsps/index.jsp>.
- The National Benefits Center (NBC) was recently created to handle administrative case processing burdens formerly borne by local USCIS district or field offices. Many kinds of petitions and applications that used to be filed directly with local offices are now filed with a "lockbox" facility located in Chicago, Illinois. The lockbox performs fee deposits, issues receipts, and handles initial data entry. After receiving cases from the lockbox, the NBC completes all necessary pre-interview processing of Form I-485 applications (including conducting background security checks, performing initial evidence review, and other tasks). Then NBC forwards the case files to local field offices for a final interview (if applicable) and a decision.
- The National Visa Center (NVC) is an intermediary that steps in after your initial visa petition has been approved, and helps collect your visa fees and get your case ready for transfer to either a U.S. consulate in your home country or a USCIS office in the United States (one of which will handle your eventual visa interview). Depending upon your basis for green card eligibility, your case file may be kept at the NVC for a number of years. The good news is that, unlike most other immigration-related offices, the NVC is easily accessible—you can ask questions, for example about why your case is delayed, or whether they're waiting for anything from you. They prefer to be contacted by email, at NVCINQUIRY@state.gov, but you can also call, at 603-334-0700.
- Immigration and Customs Enforcement (ICE) is the enforcement arm of the DHS. Its investigators check on whether both employers and employees have complied with the immigration laws. They do surveillance, make arrests, and issue orders to show up for deportation or exclusion hearings before the Immigration Court.
- The Detention Section is in charge of detaining all aliens caught by ICE or apprehended at the airport or the border.
- The Naturalization Section is responsible for deciding which aliens are eligible for citizenship and who qualifies as a citizen of the United States.

- The Litigation Section is the legal arm of the DHS and represents the government during hearings involving an alien before the Immigration Court and the federal and state courts. It also counsels the other sections of the DHS on legal matters.
- The Immigration Court (also called the Executive Office of Immigration Review), which was part of the INS until 1987, is now a separate bureaucracy.

C. Inquiring About Delays

If you're waiting for an appointment or a decision on an immigration petition or application, you're likely to be frustrated. Action by USCIS and the State Department usually takes longer than anyone thinks it should. The question is, how long is too long? To some extent, this depends on the office you're dealing with.

For U.S. consulates, you'll have to ask other people in your country, or contact the consulate directly, to find out its normal schedule. Some consulates post such information on their websites, which you can access via the U.S. State Department website at www.state.gov (on the home page, click "Travel and Business," then "Visas for Foreign Citizens," then "Locate a Consular Office").

You can find out just how backed up the various USCIS offices are by going to USCIS's online service at <https://egov.uscis.gov/cris/jsps/index.jsp>. You'll be able to request information on your own application, if it's with a service center and you have a receipt notice.

If this doesn't work, or if you're simply told that your case is "pending," take a look at the link under the heading "Obtaining a List of Processing Dates." Here, you'll find out the dates of applications filed by other people like you—and can at least see whether they're still dealing with people who applied before you, or seem to have skipped over you and are dealing with people who applied after you.

In general, however, if you are waiting for an initial receipt, such as one for an I-129F or I-130 visa petition filed with a USCIS Service Center, six weeks is the longest you should wait. After that, write a letter like the one below. (Telephoning is rarely a good option, because it's impossible to get through, and when you do, you typically find yourself speaking to someone who isn't anywhere near your file.)

Sample Letter for No Receipt Notice

222 Snowy Road
Buffalo, NY 14221
716-555-1313
March 22, 2008

Department of Homeland Security
U.S. Citizenship and Immigration Services
Vermont Service Center
75 Lower Welden St.
St. Albans, VT 05479

RE: Petitioner: Charlie Citizen
Beneficiary: Greta German
Delayed receipt notice

Dear Sir/Madam:

I filed an I-130 visa petition for the above-named beneficiary on January 14, 2008. According to my certified mail receipts, the petition arrived in your office on January 16 (a copy of the notice is enclosed). It has now been over six weeks and I have not gotten a receipt notice from you.

Please advise me of the status of my visa petition at the above address or phone number. I look forward to your response.

Very truly yours,

Charlie Citizen

Enclosed: Copy of return receipt

After you get a receipt notice, it will tell you to check the USCIS website to find out the average wait for an actual decision from USCIS. If weeks go by after that time period has passed, send another letter, like the one below.

Sample Letter for Delayed Decision

344 Novview Drive
Fremont, California 9000
510-555-1122
September 31, 2008

USCIS California Service Center
P.O. Box 10130
Laguna Niguel, CA 92607-0130

RE: Petitioner: Joe Citizen
Beneficiary: Tana Tanzanian
Processing number: WAC 01-555-54321

Dear Sir/Madam:

I filed a visa petition for my wife, the above-named beneficiary on May 1, 2008. According to your website, I should have received a decision within approximately 90 days.

Approximately 120 days have now passed, and I have received neither a decision nor any requests for further information from you.

Please advise me of the status of my visa petition at the above address or phone number. I look forward to your response.

Very truly yours,

Joe Citizen



CAUTION

Avoid the temptation to be rude. Keep your letters courteous, clear, and to the point. Demonstrate that you're well organized, and that you know exactly when USCIS or the State Department received your materials, and when you should have gotten an answer.

When writing letters, be careful to send them to the last office that you heard from. Remember, your file will, over the course of your immigration application, be transferred between various offices—and they won't take responsibility for transferring your letters of inquiry to the right place.

As with every document in your immigration case, make copies of your inquiry letters for your files. Answers to such letters usually take six weeks or longer. If you don't get an answer, write another, more urgent letter. Keep writing until you get results—or until it's no longer worth your time and you decide to hire an attorney. Attorneys can't always get results any faster than you could on your own, but they do—especially if they're members of American Immigration Lawyers Association—have access to a few inside fax lines or phone numbers, which can help them make inquiries.

D. Speeding Up Processing in Emergencies

An emergency may arise where you need an action expedited or your immigration papers approved very quickly. For example, your wife may still be abroad because your petition for her is not yet approved, when she is stricken with a rare disease for which the only treatment is found in the United States.

Normally, USCIS is unwilling to bend its rules and act outside the standard operating procedures. But if your case truly deserves an exception from the general rule, and you approach the right USCIS worker in the right way, you may get a satisfactory resolution because there is a humanitarian reason to grant your request. It enables USCIS to show its human side.

But it is sometimes difficult to locate that human side.

First of all, be resigned to the fact that there are two kinds of USCIS workers: One makes a decision strictly according to the letter of the law, and the other exercises discretion when appropriate and makes a decision according to the spirit of the law.

You may get the best help if you write a letter explaining your situation, and attach documents to substantiate why immediate action is necessary.

As mentioned earlier, if the USCIS worker fails to respond to your inquiry or denies your request, try to go up the chain of command and speak with the supervisor.

If your request for immediate action is still denied unjustly, you may have to hire a lawyer to help put the pressure on. As a last resort, the lawyer may file a case of mandamus in the federal district court to force USCIS to act on your request.

Sample Letter to Supervisor

Leona Burgett, Supervisor
USCIS Office
Anytown, Anystate 12345
August 12, 20xx

Dear Ms. Burgett:

My file number is A12345678 and I have an adjustment of status application pending in your office.

I received a letter from my mother, with a certification from the hospital, that my father suffered a heart attack and his prognosis is dim. I filed for advance parole two days ago, but my application was denied. The USCIS worker said he believed that the certification from the hospital was fraudulently obtained, and did not accept my mother's letter because it was not translated into English.

Yesterday, I returned with a translation of the letter and my affidavit explaining that in our remote hometown, the most modern equipment available is a manual typewriter, on which some letters may be crooked or spaces may be skipped. The USCIS worker said that my advance parole will still be denied regardless of my explanations that my father is truly very ill.

I am married to a U.S. citizen and have been law-abiding—except for overstaying in this country until submitting my adjustment of status application.

Please help me with my advance parole request.

Sincerely,

Max Haxsim

Max Haxsim

E. Reporting Wrongdoing

Sometimes, a USCIS worker's actions may be truly reprehensible, involving gross incompetence, immoral conduct, or unlawful behavior—for instance, asking for a bribe, either before or after doing what the worker is supposed to do. In such cases, report the misdeed to the head of the particular USCIS office.

Your letter should specify the name of the USCIS worker, if known. If you did not ask for the name or the USCIS worker refused to answer, describe him or her. You also should indicate the time, date, and manner of misconduct and the names of any witnesses.

Although your complaint may lead to an investigation where you may be asked to repeat your facts in front of an investigator or an administrative judge, do not be afraid or unwilling to get involved. The officer's abusive behavior is not likely to stop, and many more people are likely to be injured by it unless you take action.

Sometimes, They Surprise You

While it's important to make your dissatisfaction known about a USCIS officer's bad or abusive behavior, the contrary should also be true. If you are served by a USCIS worker who goes the extra mile to be helpful, by all means write to the worker's office and let them know that there is an outstanding worker in their midst.

It may encourage more workers to deliver superlative service to the public.

Sample Letter

Department of Homeland Security
USCIS

[use local address]

April 15, 20xx

Dear Investigating Officer:

This is a complaint against a male USCIS officer who refused to give me his name. He is Caucasian of medium build, has gray hair, and wears eyeglasses.

I spoke with this officer on Tuesday, April 5, 20xx, at 10:00 a.m. on the 8th floor of the USCIS office in New York. He demanded a hundred extra dollars in cash before approving my request for advance parole.

When I refused to pay the additional money, he said that although all my paperwork was in order, he would have to deny the request since I wasn't willing to "pay what it took to get the wheels in motion."

Alfred Beiz, a paralegal at the law firm of Dias & Associates, was standing in line behind me, waiting to file some papers, and overheard the officer's remarks. Mr. Beiz is willing to file an affidavit swearing to the conversation he heard.

I request that you promptly investigate my charge against this officer, and inform me about the action taken.

Thank you for your attention.

With my best regards,

Ali Mufti

Ali Mufti

Keeping, Renewing, and Replacing Your Green Card

A. Renewing or Replacing Your Green Card	294
B. When the Immigration Authorities Can Take Away Your Card	294
1. Failing to Report a Change of Address	295
2. Failing to Maintain a Residence in the United States.....	295
3. Explaining Your Failure to Reenter the United States.....	296
4. Becoming Inadmissible	297
5. Becoming Removable	297
C. Planning to Apply for U.S. Citizenship.....	297

Now that you have finally obtained that plastic card giving you the right to stay and work in the United States without any hassle, and to leave and return without applying for a visa, make sure you don't lose the card—or your right to it.

If all goes as it should, your green card will give you the right to live in the United States for as long as you want to. However, you need to protect this right by taking such measures as telling USCIS when you move, not spending too long outside the United States, and not becoming inadmissible or deportable. You should also make sure to renew your green card on time and replace it if it's lost.



CAUTION

Think about applying for U.S. citizenship.

After a certain number of years with a green card (usually five, but less for some people), you can apply for U.S. citizenship. This is a much more secure status—you'll be able to travel for longer periods of time, be safe from deportation, and will gain the right to vote. Start planning now: If you wait until five years go by to start thinking about citizenship, you may discover that there was something you needed to do (or something you did that you shouldn't have done) while you were waiting. For complete guidance, see *Becoming a U.S. Citizen: A Guide to the Law, Exam & Interview*, by Ilona Bray (Nolo).

A. Renewing or Replacing Your Green Card

Whether your green card is lost or expires and needs to be renewed, U.S. Citizenship and Immigration Services (USCIS) requires that you file Form I-90, Application to Replace Permanent Resident Card. (See the sample at the end of this chapter.)

The filing fee is currently \$290, plus \$80 for fingerprints. (However, you don't need to pay the filing fee if you're getting a replacement green card because of a mistake by USCIS, for example if it misspelled your name on the card.) Where to

file Form I-90 gets a bit complicated depending on why you are filing it, so the best thing to do is visit USCIS's website at www.uscis.gov for the most up-to-date procedures. Consider e-filing this form in order to avoid any confusion about how to proceed. (See instructions for e-filing in Chapter 23.)

You can also use Form I-90 to get a new green card when:

- your name has been changed, due to marriage or divorce, in which case you must include a copy of your marriage or divorce certificate and your old card
- you turn 14 years of age; USCIS requires that you change your green card for a new one
- you receive an incorrect card with an erroneous name, birthdate, photo, or date of entry
- you never received your green card, or
- your green card is blue, Form I-151; these old cards were issued during the 1960s and 1970s and expired on August 2, 1996, because of their lack of security features, giving opportunities for fraud.

You must swear that all the answers you give when applying for a green card are correct. If you knowingly falsify or conceal a material fact, or use any false document in submitting the application, you may be fined up to \$10,000, imprisoned for up to five years, or both.

You should receive your new green card (Form I-551) within 30 to 45 days after USCIS receives your paperwork and filing fee.

B. When the Immigration Authorities Can Take Away Your Card

As a green card holder, you are expected to be law-abiding. Because you were not born with the right to stay in the United States and have not yet been naturalized, the immigration laws put certain

restrictions on you that do not apply to U.S. citizens.

1. Failing to Report a Change of Address

The immigration law says that an alien who fails to give written notice to USCIS of a change of address can be deported or removed from the United States. Not only that, the alien could be charged with a misdemeanor and if found guilty, fined up to \$200, imprisoned up to 30 days, or both.

The alien would have to convince the immigration judge during removal hearings that failure to notify USCIS of an address change was reasonably excusable or was not willful.

Therefore, to avoid any possible problem whenever you move to a new address, submit Form AR-11. To submit by mail, get the form from a USCIS office or the USCIS website at www.uscis.gov and send it to:

Department of Homeland Security
U.S. Citizenship and Immigration Services
Change of Address
P.O. Box 7134
London, KY 40742-7134

However, you can also submit the form online, by going to www.uscis.gov/AR-11. You'll need your:

- USCIS receipt number (if you have a pending case with USCIS)
- new and old addresses
- names and biographical information for any family members for whom you have filed a petition, and
- date and location (port of entry) of your last entry into the United States.

The advantage to submitting online is that you'll receive confirmation that your message got through.

There is no fee for filing this form.

2. Failing to Maintain a Residence in the United States

You became a permanent resident presumably because you intend to live in the United States. If you live outside the United States for more than 12 months, it will appear to the immigration authorities that you do not intend to make your home in America.

It is wise to come back before 180 days have gone by. This will decrease your risk of losing your green card and help ensure that your admission at the airport or other port of entry is as free of trouble as possible.

Otherwise, when you return after your year abroad, the border officials may put you into removal proceedings to determine whether you have lost the right to live in the United States as a permanent resident. Your green card may be taken away.

But you can do something to help avoid such a situation. If you know in advance that you may not be able to return to the United States within a year's time, you can apply for a reentry permit by mailing the following to the USCIS Nebraska Service Center (get the address from the USCIS website) at least 30 days before you intend to depart, along with a filing fee (currently \$305):

- Form I-131, Application for Travel Document (see the sample at the end of this chapter)
- a copy of your green card (front and back), and
- two photographs (see Chapter 22, Section E, for details).

USCIS will mail a reentry permit to the address in the United States you have indicated on your application.

Whether or not you get a reentry permit, there are other ways to protect your right to your green card. The authorities will be particularly interested in your intentions when you leave the United States. If your intent is to be gone temporarily, then you should be able to maintain your status.

Since the U.S. government cannot know your real intent, it will look at things such as:

- your purpose in leaving
- whether your purpose is consistent with a temporary absence
- whether you still have a job, home, or family in the United States, and
- the duration of your trip.

Getting a reentry permit before you leave is good evidence that you intend to return to the United States to continue living. It also means that the authorities cannot rely solely on the length of your absence to determine that you have lost your permanent residence status. However, since they can still look at other facts in your life, you should maintain as many ties to the United States as possible—even if you get a reentry permit.

If you have to go abroad before you receive the permit, you can request that the permit be delivered to your address overseas or, if the mail in your country is not reliable, through the United States embassy or consulate in your country.

However, you must be physically present in the United States when you file the application. If you have been outside of the U.S. for four out of the past five years, the permit will be issued for only one year. And if you have been out of the U.S. for that amount of time, you can also expect to receive intense questions at the airport about whether you have maintained your legal residence in the United States.

If a reentry permit is issued, it is good for two years.

3. Explaining Your Failure to Reenter the United States

If you stay longer than the two years allowed by the reentry permit, or if you stay longer than one year without applying for the reentry permit, you will jeopardize your immigration status.

Upon arriving at the port of entry, the officials will question you on your right to return as a green card holder. You must be ready to present proof of why you did not return to the United States within the time expected.

Illness. A permissible delay could be due to your own serious illness or that of a close relative, especially if the illness started after you left. Convincing evidence of the illness would be copies of a doctor's written diagnosis, medical bills, prescriptions, and letters to you from friends.

Death. A death in the family could be another reason for delay. Bring with you copies of the death certificate, letters from the court or a lawyer on settlement of the estate, life insurance letters concerning distribution of the insurance proceeds, and a court order dividing property of the deceased.

Business reasons. Setting up or closing down a business enterprise could also be a valid reason for delay. Be ready to show bank statements, a contract of sale, invoices, letters from the bank, and letters from your business partners, your lawyer, and your accountant.

In other words, if you are detained at the airport for a more thorough questioning, you must be ready to convince the officer that you had a very good reason for not returning to the United States when expected. If the immigration officer is still not convinced, you will have another chance to explain your case before the immigration judge at your hearing.

Insist on your right to a hearing. Too often, the officer acts intimidating, and the scared green card holder signs away all green card rights. Once you do this, it is very difficult to get a second chance to explain your side before the Immigration Court. Your status will most likely automatically revert to that of a nonimmigrant—and you will have to repeat the process of getting a green card all over again.

However, if you were coerced or forced to sign away your rights, contact an immigration attorney, who may be able to help you fight to keep your green card.

4. Becoming Inadmissible

Grounds of inadmissibility are conditions that the immigration authorities can legally use to keep you from entering the United States. You had to prove that you weren't inadmissible (that is, hadn't committed any crimes, didn't have any serious illnesses, and weren't likely to need public assistance) in order to get your green card. But these same grounds apply to you every time you leave the United States and try to return. Even with your green card, you could be refused reentry. If one of these grounds applies to you, however, you may be able to get it waived. (See Chapter 4.)

5. Becoming Removable

In addition to the grounds of inadmissibility described above, the immigration laws list grounds of removability. These are actions or circumstances that can cause you to lose your right to the green card and be placed in removal proceedings in the United States. If you lose, you could be deported back to the country you came from.

The grounds of removability are too complex to explain in detail here. We have already discussed one of them, namely your obligation to report your changes of address to USCIS. In general, however, you need to make sure not to violate any immigration or criminal laws and not to get involved with any organizations that the U.S. government believes to be terrorist.

For a complete list of the grounds of removability, see I.N.A. § 237 or 8 U.S.C. § 1227.

C. Planning to Apply for U.S. Citizenship

You can avoid all the hassles and worries about losing your green card by applying for U.S. citizenship as soon as you're eligible. Citizenship is the highest benefit available under the U.S. immigration laws, and once you're a citizen, your status can't be taken away (unless you committed fraud in your citizenship application). You're not eligible for U.S. citizenship just yet—most people must wait between three and five years after getting their green card. But it's not too early to start thinking about citizenship and planning to apply.

The basic requirements for U.S. citizenship include:

- You've had permanent residence (a green card) for the required number of years—usually five, but three years if you've been married to and living with a U.S. citizen all that time. Also, refugees and asylees will receive green cards that are backdated to give them credit for some of their time spent in the U.S. before actually getting approved for permanent residence, so in effect they don't need to wait a full five years after the approval.
- You've been “physically present,” that is lived in the U.S., for at least half your required years of permanent residence.
- You've been “continuously present” in the United States since being approved for your green card.
- You've lived in the same U.S. state or USCIS district for three months before applying to the USCIS there.
- You're at least 18 years old at the time of filing the application.
- You've demonstrated good moral character over the years leading up to your application for citizenship—for example, by paying your taxes

and child support and not committing any crimes.

- You can speak, read, and write English.
- You pass a brief test covering U.S. history and government.
- You're willing to affirm loyalty to the U.S. and serve in its military if necessary.

For now, the important message is to think twice before taking any long trips outside the U.S., do your best to learn English, and be a responsible member of society. You can start worrying about the details of your eligibility, and start studying for the test, closer to the time when you're allowed to apply.



RESOURCE

Need complete instructions on the eligibility criteria and how to apply for U.S. citizenship? See [*Becoming a U.S. Citizen: A Guide to the Law, Exam & Interview*](#), by Ilona Bray (Nolo).

Application to Replace Permanent Resident Card, Sample Form I-90 (page 1)

Department of Homeland Security
U.S. Citizenship and Immigration Services

OMB No. 1615-0082; Expires 06/30/09

I-90, Application to Replace Permanent Resident Card

START HERE - Please type or print in black ink.**Part 1. Information about you.**

Family Name <i>Cosmin</i>	Given Name <i>Mihaita</i>	Middle Initial
U.S. Mailing Address - C/O <i>Ravin Cosmin</i>		
Street Number and Name <i>8383 Kew Gardens</i>		Apt. # <i>4001</i>
City <i>Queens</i>		
State <i>New York</i>	ZIP Code <i>11415</i>	
Date of Birth (Month/Day/Year) <i>10/02/1951</i>	Country of Birth <i>Romania</i>	
Social Security # <i>112-64-5793</i>	A # <i>A24-070-502</i>	

Part 2. Application type.**1. My status is:** (check one)

- a. ☒ Permanent Resident - (Not a Commuter)
b. ☐ Permanent Resident - (Commuter)
c. ☐ Conditional Permanent Resident

2. Reason for application: (check one)**I am a Permanent Resident or Conditional Permanent Resident and:**

- a. ☒ My card was lost, stolen or destroyed.
b. ☐ My authorized card was never received.
c. ☐ My card is mutilated.
d. ☐ My card was issued with incorrect information because of a USCIS administrative error.
e. ☐ My name or other biographic information has changed since the card was issued.

I am a Permanent Resident and:

- f. ☐ My present card has an expiration date and it is expiring.
g. ☐ I have reached my 14th birthday since my card was issued.
h. 1. ☐ I have taken up Commuter status.
h. 2. ☐ I was a Commuter and am now taking up residence in the U.S.
i. ☐ My status has been automatically converted to permanent resident.
j. ☐ I have an old edition of the card.

Part 3. Processing information.

Mother's First Name <i>Silvia</i>	Father's First Name <i>Claidus</i>
City of Residence where you applied for an Immigrant Visa or Adjustment of Status <i>Bucharest, Romania</i>	Consulate where Immigrant Visa was issued or USCIS office where status was Adjusted <i>U.S. Consulate, Bucharest</i>
City/Town/Village of Birth <i>Bucharest</i>	Date of Admission as an immigrant or Adjustment of Status <i>10/31/2000</i>

FOR USCIS USE ONLY

Returned _____ _____ _____	Receipt
Resubmitted _____ _____ _____	
Reloc Sent _____ _____ _____	
Reloc Rec'd _____ _____ _____	
☐ Applicant Interviewed	
Status as _____ Verified by _____ Class _____ Initials _____ FD-258 forwarded on _____ I-89 forwarded on _____ I-551 seen and returned _____ (Initials) Photocopy of I-551 verified _____ (Initials) _____ Name _____ Date _____ Sticker # _____ (ten-digit number)	

Action Block

To Be Completed by Attorney or Representative, if any ☐ Fill in box if G-28 is attached to represent the applicant
VOLAG#
ATTY State License #

Form I-90 (Rev. 10/26/05)Y

Sample Form I-90 (page 2)

Part 3. Processing information (continued):

If you entered the U.S. with an Immigrant Visa, also complete the following:

Destination in U.S. at time of Admission New York, New York Port of Entry where Admitted to U.S. JFK Airport

Are you in removal/deportation or recission proceedings? ☒ No ☐ Yes

Since you were granted permanent residence, have you ever filed Form I-407, Abandonment by Alien of Status as Lawful Permanent Resident, or otherwise been judged to have abandoned your status? ☒ No ☐ Yes

If you answer yes to any of the above questions, explain in detail on a separate piece of paper.

Part 4. Signature. (Read the information on penalties in the instructions before completing this section. You must file this application while in the United States.)

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it is all true and correct. I authorize the release of any information from my records that U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature	Date	Daytime Phone Number
<u>Mihaila Cosmin</u>	<u>January 6, 2009</u>	<u>718-675-4892</u>

Please Note: If you do not completely fill out this form or fail to submit required documents listed in the instructions, you cannot be found eligible for the requested document and this application may be denied.

Part 5. Signature of person preparing form, if other than above. (Sign below)

I declare that I prepared this application at the request of the above person and it is based on all information of which I have knowledge.

Signature	Print Your Name	Date	Daytime Phone Number
-----------	-----------------	------	----------------------

Name and Address of Business/Organization (if applicable)

Application for Travel Document, Sample Form I-131 (page 1)

Department of Homeland Security
U. S. Citizenship and Immigration Services

OMB No. 1615-0013; Expires 11/30/07

I-131, Application for Travel Document

DO NOT WRITE IN THIS BLOCK

FOR USCIS USE ONLY (except G-28 block below)

Document Issued ☐ Reentry Permit ☐ Refugee Travel Document ☐ Single Advance Parole ☐ Multiple Advance Parole Valid to: If Reentry Permit or Refugee Travel Document, mail to: ☐ Address in Part 1 ☐ American embassy/consulate at: ☐ Overseas DHS office at:	Action Block	Receipt ☐ Document Hand Delivered On _____ By _____ To be completed by Attorney/Representative, if any. Attorney State License # _____ ☐ Check box if G-28 is attached.
--	---------------------	--

Part 1. Information about you. (Please type or print in black ink.)

1. A # 24-070-502	2. Date of Birth (mm/dd/yyyy) 10/02/51	3. Class of Admission Spouse of U.S. citizen	4. Gender Male ☒ Female ☐
5. Name (Family name in capital letters) COSMIN	(First) Mihaita	(Middle) 	
6. Address (Number and Street) 8383 Kew Gardens		Apt. # 4001	
City Queens	State or Province New York	Zip/Postal Code 11415	Country USA
7. Country of Birth Romania	8. Country of Citizenship Romania	9. Social Security # (if any.) 123-44-5555	

Part 2. Application type (check one).

- a. ☒ I am a permanent resident or conditional resident of the United States and I am applying for a reentry permit.
- b. ☐ I now hold U.S. refugee or asylee status and I am applying for a refugee travel document.
- c. ☐ I am a permanent resident as a direct result of refugee or asylee status and I am applying for a refugee travel document.
- d. ☐ I am applying for an advance parole document to allow me to return to the United States after temporary foreign travel.
- e. ☐ I am outside the United States and I am applying for an advance parole document.
- f. ☐ I am applying for an advance parole document for a person who is outside the United States. If you checked box "f", provide the following information about that person:

1. Name (Family name in capital letters) 	(First) 	(Middle)
2. Date of Birth (mm/dd/yyyy) 	3. Country of Birth 	4. Country of Citizenship
5. Address (Number and Street) 		Apt. #
Daytime Telephone # (area/country code) 		
City 	State or Province 	Zip/Postal Code
Country 		

INITIAL RECEIPT _____ RESUBMITTED _____ RELOCATED: Rec'd. _____ Sent _____ COMPLETED: Appv'd. _____ Denied _____ Ret'd. _____

Form I-131 (Rev. 10/26/05) Y

Sample Form I-131 (page 2)

Part 3. Processing information.

1. Date of Intended Departure (mm/dd/yyyy) 12/15/2008	2. Expected Length of Trip 13 months
--	---

3. Are you, or any person included in this application, now in exclusion, deportation, removal or recission proceedings? ☒ No ☐ Yes (Name of DHS office):

If you are applying for an Advance Parole Document, skip to Part 7.

4. Have you ever before been issued a reentry permit or refugee travel? ☒ No ☐ Yes (Give the following information for the last document issued to you):

Date Issued (mm/dd/yyyy): Disposition (attached, lost, etc.):

5. Where do you want this travel document sent? (Check one)

- a. ☒ To the U.S. address shown in **Part 1** on the first page of this form.
- b. ☐ To an American embassy or consulate at: City: Country:
- c. ☐ To a DHS office overseas at: City: Country:
- d. If you checked "b" or "c", where should the notice to pick up the travel document be sent?
- ☐ To the address shown in **Part 2** on the first page of this form.
- ☐ To the address shown below:

Address (Number and Street) 	Apt. # 	Daytime Telephone # (area/country code)
City 	State or Province 	Zip/Postal Code
Country 		

Part 4. Information about your proposed travel.

Purpose of trip. <i>If you need more room, continue on a separate sheet(s) of paper.</i> To visit my dying brother and assist with the settlement of his estate.	List the countries you intend to visit. Romania
--	---

Part 5. Complete only if applying for a reentry permit.

Since becoming a permanent resident of the United States (or during the past five years, whichever is less) how much total time have you spent outside the United States?

☒ less than six months	☐ two to three years
☐ six months to one year	☐ three to four years
☐ one to two years	☐ more than four years

Since you became a permanent resident of the United States, have you ever filed a federal income tax return as a nonresident, or failed to file a federal income tax return because you considered yourself to be a nonresident? (If "Yes," give details on a separate sheet(s) of paper.) ☐ Yes ☒ No

Part 6. Complete only if applying for a refugee travel document.

1. Country from which you are a refugee or asylee:

If you answer "Yes" to any of the following questions, you must explain on a separate sheet(s) of paper.

2. Do you plan to travel to the above named country? ☐ Yes ☐ No
3. Since you were accorded refugee/asylee status, have you ever:
- | | |
|--|--|
| a. returned to the above named country? | ☐ Yes ☐ No |
| b. applied for and/or obtained a national passport, passport renewal or entry permit of that country? | ☐ Yes ☐ No |
| c. applied for and/or received any benefit from such country (for example, health insurance benefits). | ☐ Yes ☐ No |
4. Since you were accorded refugee/asylee status, have you, by any legal procedure or voluntary act:
- | | |
|--|--|
| a. reacquired the nationality of the above named country? | ☐ Yes ☐ No |
| b. acquired a new nationality? | ☐ Yes ☐ No |
| c. been granted refugee or asylee status in any other country? | ☐ Yes ☐ No |

Sample Form I-131 (page 3)

Part 7. Complete only if applying for advance parole.

On a separate sheet(s) of paper, please explain how you qualify for an advance parole document and what circumstances warrant issuance of advance parole. Include copies of any documents you wish considered. *(See instructions.)*

1. For how many trips do you intend to use this document? ☐ One trip ☐ More than one trip
2. If the person intended to receive an advance parole document is outside the United States, provide the location (city and country) of the American embassy or consulate or the DHS overseas office that you want us to notify.

City

Country

3. If the travel document will be delivered to an overseas office, where should the notice to pick up the document be sent:

- ☐ To the address shown in **Part 2** on the first page of this form.
- ☐ To the address shown below:

Address (Number and Street)

Apt. #

Daytime Telephone # (area/country code)

City

State or Province

Zip/Postal Code

Country

Part 8. Signature. *Read the information on penalties in the instructions before completing this section. If you are filing for a reentry permit or refugee travel document, you must be in the United States to file this application.*

I certify, under penalty of perjury under the laws of the United States of America, that this application and the evidence submitted with it are all true and correct. I authorize the release of any information from my records that the U.S. Citizenship and Immigration Services needs to determine eligibility for the benefit I am seeking.

Signature

Date (mm/dd/yyyy)

Daytime Telephone Number (with area code)

Please Note: *If you do not completely fill out this form or fail to submit required documents listed in the instructions, you may not be found eligible for the requested document and this application may be denied.*

Part 9. Signature of person preparing form, if other than the applicant. *(Sign below.)*

I declare that I prepared this application at the request of the applicant and it is based on all information of which I have knowledge.

Signature

Print or Type Your Name

Firm Name and Address

Daytime Telephone Number (with area code)

Fax Number (if any.)

Date (mm/dd/yyyy)

How to Find and Work With a Lawyer

A. Where to Look for a Lawyer	306
1. Immigration Groups.....	306
2. Friends and Relatives	306
3. Embassies or Consulates.....	306
4. Ads in Ethnic Newspapers.....	306
5. Lawyer Referral Groups.....	306
B. Deciding on a Particular Lawyer	307
1. The Initial Interview	307
2. Consultation Fees.....	307
3. Dealing With Paralegals and Assistants	308
C. Paying the Lawyer.....	308
1. Types of Fee Arrangements	308
2. Get It in Writing.....	308
D. Managing the Lawyer.....	308
1. Carefully Check Every Statement	309
2. Educate Yourself.....	309
3. Keep Your Own Calendar	309
4. Maintain Your Own File	309
E. Firing a Lawyer	310

Although this book's philosophy is to help you understand the immigration law and procedures, your situation may be too complicated for you to handle on your own—particularly if you've spent time in the U.S. illegally, have a history of drug use or criminal activity, or fit any of the other problem scenarios described in this book. Or you may be unable to get USCIS to respond to a request for action on your application. It may become necessary to hire a lawyer or other immigration professional for help. This chapter gives you valuable tips on where to find help—and what to do once you find that help.

A. Where to Look for a Lawyer

A bad lawyer is worse than a thief. Good lawyers are worth their weight in gold. Look carefully to find a good, competent, honest lawyer who will help you with your immigration problems without charging you a hefty fee up front and a huge hourly fee as your case proceeds.

You can go a long way toward ensuring that you get the best lawyer possible by spending some time and effort before you hire one. There are a number of good places to begin your search.

1. Immigration Groups

Organizations that specialize in helping people with immigration problems may be able to answer your questions, represent you in your case, or refer you to an experienced immigration lawyer if the group does not take on individual cases. Ask your local USCIS office or a church, mosque, or temple for referrals.

Many of these organizations are what are called “nonprofits,” meaning they exist to help the public, not for anyone's personal gain. They raise money from individuals, businesses, and charitable foundations. Unfortunately, because the U.S. government gives almost no money to nonprofits that help immigrants, and because other funding

is rarely enough to meet the community's need, you'll need to be patient with these groups. They may be understaffed and have difficulties returning your phone calls within a reasonable time or spending time with you at all. Also realize that they can charge you market-rate fees for their services, although most try to offer lower fees for low-income immigrants.

2. Friends and Relatives

Ask your friends and relatives about their own experiences with their immigration lawyers—whether they were satisfied with the representation, the competency, and the fees charged, and about their personal rapport with their attorney. Never choose a lawyer simply because he or she was the relative or classmate or friend of your brother or sister or best friend, without having an idea of the lawyer's competency or track record.

3. Embassies or Consulates

Your own embassy or consulate may have a list of immigration lawyers to recommend to you. Normally, your country's consular officers have your interests at heart and would not recommend a lawyer who is incompetent, a rogue, or a cheat.

4. Ads in Ethnic Newspapers

Your own ethnic newspapers and journals usually have an array of immigration lawyers offering their services directly through advertisements. But beware—anyone can buy ad space. Be sure to investigate the lawyer's reputation on your own. Ask your friends. Check with the local bar association or with immigration support groups in the area.

5. Lawyer Referral Groups

Although the local bar association and other lawyer groups may offer referral services, there is often little or no screening of lawyers listed in these

services. The only qualification may be that no malpractice case has been filed against the lawyer.

The American Immigration Lawyers Association (www.aila.org) operates a lawyer referral service. The lawyers who participate in the service are usually competent and knowledgeable.

Nolo also offers, for certain parts of the U.S., a lawyer directory where lawyers have a chance to describe their philosophy and services, at <http://lawyers.nolo.com>.

Beware of the Bad Guys

Nonattorney practitioners, visa consultants, immigration pseudo-experts, travel agents, people posing as attorneys, and nonprofit organizations not authorized by U.S. Citizenship and Immigration Services (USCIS) to represent aliens before USCIS—all of them litter the immigration marketplace.

Some of them provide good advice. But for the most part, be wary—especially if they promise you a green card without any hassle for a certain amount of money. Aside from the fact that it is unlawful to practice immigration law without being admitted by a state bar association, there is no way you can check on these individuals' expertise, and nowhere to complain if their services are poor. Many incompetent consultants prey on immigrants and then simply pack up and move when too many people catch on to them.

Report any wrongdoers to the attorney general's office in your state so that they will be forced to stop victimizing unsuspecting immigrants.

B. Deciding on a Particular Lawyer

Once you have a referral to a lawyer—or even better, several referrals—contact each to see which one you like best.

A law firm may have a good reputation on immigration practice, but the lawyer assigned to handle your case is the lawyer responsible for the success or failure of your case. Base your decision about whether to hire an individual lawyer on the rapport you feel with him or her—not just on a law firm's reputation.

1. The Initial Interview

Start by asking for an appointment. The office may ask you to first discuss your immigration problem over the phone, because the lawyer may not handle cases such as yours.

When you do find a lawyer who agrees to meet with you, go to the meeting with the thought in mind that you are interviewing him or her—not the other way around. It will be you who decides whether or not you want to hire that particular lawyer to handle your case.

Rely on your instincts when you first interview the lawyer. Does he or she seem competent, knowledgeable, fair, efficient, courteous, and personable? It would be unfortunate and unwise for you to feel uneasy every time you are in contact with your lawyer while paying your hard-earned money.

2. Consultation Fees

Some lawyers may not charge you an initial consultation fee, but most immigration lawyers charge between \$100 and \$200, depending on the city where you live, the expertise of the lawyer, and how long the interview lasts. When you call for an appointment, ask whether a consultation fee is charged and how much it is. Also ask how long the lawyer has been in immigration law practice and how many cases like yours he or she has handled.

If you take a few minutes to get organized beforehand, 30 minutes to an hour should be enough time to explain your situation and get at

least a basic opinion of what the lawyer can do for you and what that help is likely to cost. Bring with you:

- your passport
- Form I-94
- a copy of any immigration forms you may have filled out and correspondence received from the INS or USCIS, and
- documents you may need to prove family relationships, such as husband and wife or parent and child.

3. Dealing With Paralegals and Assistants

Because the practice of immigration law usually involves filling out a great number of forms, the lawyer may hire a paralegal or secretary who interviews you to get many of the answers needed to complete your paperwork.

The paralegal or secretary becomes your contact person. At the initial interview, ask permission to interview the paralegal who will be working on your case, too, so that you have an idea of how comfortable you will be in dealing with the assistant. Ask whether he or she is supervised and whether the lawyer normally reviews the forms before submitting them to the U.S. government.

C. Paying the Lawyer

Some law firms or organizations specializing in immigration may take your case *pro bono*, meaning they will provide a lawyer to handle your case without asking for any money or for only a small amount to cover expenses. However, due to limited resources and great demand, they may not be able to accept your immigration case and may only be able to tell you what your legal options are and advise you about whether you seem to have a strong case. These groups may refer you to a list of attorneys they feel would be representing you in

the same spirit of service as they do and whose fees would be reasonable.

1. Types of Fee Arrangements

Most lawyers are guided by the principle that time is money. Many will charge for their work based on quarter-hours, so that if you call and spend ten minutes on the telephone, you will be charged for a minimum of 15 minutes of work. Unless you are completely satisfied that your lawyer is honest, you may be opening yourself up to paying into a bottomless money pit when you agree to pay the lawyer according to an hourly charge.

If you agree to the per-hour billing rate—usually unwise unless you are in a deportation or exclusion proceeding due to grave criminal conduct or some other complicated case—request a schedule of legal work to be done and a maximum you will pay for each task.

If the case is simple, as usually is the case with an immigration petition for relatives, you may be charged a flat fee, from several hundred to a few thousand dollars. And if the lawyer agrees, you can pay the fee in installments during the period it takes to process your immigration papers.

2. Get It in Writing

Most disagreements between lawyers and clients involve fees, so be sure to get all the details involving money in writing—the per hour billing rate or flat maximum fee, how often you will be billed, and how the attorney will handle any funds you may have deposited in advance to cover expenses.

D. Managing the Lawyer

A great many complaints against lawyers have to do with their failure to communicate with their clients. Your lawyer may be the one with the legal expertise, but the rights that are being pursued are

yours—and you are the most important person involved in your case. You have the right to demand that your lawyer be reasonably available to answer your questions and to keep you posted on your case.

You may need to put some energy into managing your lawyer.

1. Carefully Check Every Statement

Each statement or bill should list costs that the lawyer has paid or that you are expected to pay. If any one lacks sufficient detail, call your lawyer and politely demand that a new, more detailed version be sent before you pay it. Don't feel as though you're being too pushy: The laws in many states actually require thorough detail in lawyers' billing statements.

2. Educate Yourself

By learning the most you can about immigration laws and what to expect during the procedure, you'll be able to monitor your lawyer's work and may even be able to do some legwork, make a suggestion, or provide information that will move your case along faster.

Unfortunately, USCIS and the State Department are bureaucracies and oftentimes, a case is simply held up until the slow-grinding wheels of procedure get through it. Many people unfairly blame their lawyers for delays that are actually the government's fault—or just a natural result of how the immigration laws are structured. However, if an immigration application is proceeding much more slowly than your lawyer initially told you it would, then ask your lawyer whether it would make sense to contact the appropriate office and find out the reason for the delay.

3. Keep Your Own Calendar

Note when papers and appearances are due in court. If you rely on your lawyer to keep your case

on schedule, you may be unpleasantly surprised to find that an important deadline has been missed. This could put your immigration status in jeopardy. Call or write to your lawyer at least a week before any important deadline in your case to inquire about plans to meet it.

Of course, you need to do your part, by showing up for appointments with your lawyer on time, so that your case can be adequately prepared. And you must be especially careful to arrive on time—or better yet, early—for any appointments with immigration officials. If you're not in the room when you're scheduled to be there, your case may be delayed for weeks or months, or, in the case of Immigration Court, you may receive an immediate order of removal (deportation). The lawyer will be unable to help you out of this mess, even if the lawyer was in the courtroom at the time.

4. Maintain Your Own File

Never give away original documents connected with your case; keep the originals for your own files and give only copies to your lawyer. USCIS will accept copies of the original documents. Also, ask for a copy of every letter and application your lawyer sends to USCIS. By having a well-organized file of your own, you'll be able to discuss your case with your lawyer intelligently and efficiently—even over the telephone.

Being well-informed will help keep your lawyer's effectiveness up and your costs down, especially if your lawyer is working on an hourly basis, in which case telephone consultations are less expensive than office visits.

Also, your lawyer cannot hold your immigration files ransom in case you decide to change legal counsel, because you have copies of everything the office file has on your case.

In any event, you have a right to promptly receive a copy of your file. The attorney may ask you to sign or produce a written authorization and transfer request before he turns the file over to you.

E. Firing a Lawyer

Change lawyers if you feel that's necessary. If the relationship between you and the lawyer you chose doesn't seem to be working, or if you feel that your case isn't progressing as it should, think about asking another lawyer to take over.

If you get upset every time you talk to your lawyer because he or she does not seem to understand what you are saying about your case, or will not take the time to listen, you will save yourself both money and mental anguish if you look for someone else to represent you.

But be clear with the first lawyer that you are taking your business elsewhere, and immediately put your decision in writing. You could end up receiving bills from both lawyers—both of whom will claim they handled the lion's share of your case. Before you pay anything, be sure that the total amount of the bills does not amount to more than you agreed to pay. Do not be embarrassed to negotiate with your lawyer. If you have a contingency fee arrangement, it is up to your new lawyer and former lawyer to work out how to split the fee.

What to Do About Bad Legal Advice

Take prompt action against any behavior by a lawyer that appears to be deceptive, unethical, or otherwise illegal. A call to the local bar association, listed in the telephone directory under Attorneys, should provide you with guidance on what types of lawyer behavior are prohibited and how to file a complaint.

Still, in most states, groups that regulate attorneys are biased toward them. Unless the lawyer's conduct is plainly dishonest or he or she has abandoned your case, you will probably not get much satisfaction. However, sometimes the threat of filing a complaint can move your lawyer into action. And if worst comes to worst, filing a formal complaint will create a document that you'll need should you end up later filing a malpractice lawsuit against a lawyer.



Index

A

- Abused spouse or child, cancellation of removal for, 215–216
- Abusive behavior of USCIS official, 286, 287–288, 291
- Acquisition of citizenship, 268–271
- Adam Walsh Child Protection and Safety Act (2006), 81, 104
- Address changes, 228, 244, 283, 295
- Adjustment of status (for legal immigrants living in the U.S.)
 - age for K-2 applicants, 66
 - for alien enlistees, 198
 - for Amerasian immigrants, 152
 - for brother or sister, 161
 - consular processing vs., 218, 238
 - disqualification for, 222
 - documentation of receipt from USCIS, 227
 - exceptions to legal presence requirement, 44–45
 - filing for cancellation of removal and, 214
 - forms and documents for filing, 223–225
 - and illegal stay in U.S., 88–89
 - for immediate relatives of U.S. citizens, 60, 67, 89, 219–220, 229
 - for immigrant children of U.S. citizens, 117
 - for immigrants legally in the U.S., 220–221
 - law 245(i) and penalty fee, 221–222, 223
 - limitations on, 45–46, 83
 - marriage visa vs., 82
 - for old-timers, 206
 - overview, 218
 - for parents of a U.S. citizen, 108
 - for political asylees, 176
 - qualifying for, 219–222
 - sample of forms, 231–234, 235
 - submission procedures, 226–227
 - travel restrictions while pending, 227
 - waiting period for, 44
- Adopted children
 - definition of, 114
 - as immediate relatives, 51
 - as U.S. citizen's brother or sister, 159
 - visa petition for, 114–116, 119
 - See also* Orphan immigrants
- Adoption Act (2000), 116
- Adoptive parents, 107
- Advance parole, 178, 227, 281–282, 290
- Affidavit of support
 - for Amerasian immigration, 151–152
 - assets for meeting financial requirements, 37, 42, 43–44, 64, 240
 - exemption from, 41–44, 224, 241
 - See also* Form I-134; Form I-864
- Affidavits (sworn statements)
 - for Amerasians lacking Vietnamese identification card, 151
 - for consular processing, 64, 240, 262–263
 - for couples planning to marry, 62, 66
 - on persecution, for refugee status, 169
 - for proving a family relationship, 277–278
 - for proving a U.S. citizenship, 278

- proving fatherhood with, 113
- for replacement of visitor visas, 24
- sample of, 277
- for TPS applications, 178
- Afghani translators, 197
- AIDS, inadmissible status and waivers for, 35
- Alcohol addiction, inadmissibility for, 46
- Alien enlistee's application for permanent residence, 197
- Alien Registration Number (A#), 276, 283–284
- Amerasian immigrants
 - filing the paperwork, 151–152
 - overview, 150
 - qualifying as, 150
 - sample of form, 153–156
 - sponsors for, 150–151
- Amnesties, 9, 15
- Amnesty Law (1986), 9
- Antiterrorism and Effective Death Penalty Act (AEDPA—1996), 9
- Applications, filling out and submitting
 - address changes during application process, 283
 - adjustment of status applications, 226
 - copying everything, 276–278, 280, 281
 - honest and thorough answers, 274
 - photographs for identification, 279–280
 - proving a family relationship, 276–278
 - proving an INS or USCIS approval, 278
 - proving permanent residence, 279
 - proving U.S. citizenship, 278–279
 - tips for, 275–276, 281–284
 - verifying forms and fees before mailing, 274–275
- Applications, tracking, 286–291
- Application to Replace Permanent Resident Card (I-90), 294, 299–300
- Approval notice
 - for adjustment of status, 223
 - for adopting orphan children, 136
 - filing for extension of, 135
 - immigrant's loss of, 278
 - priority date on, 53
- Arrival/departure record. *See* Form I-94
- Asiatic Barred Zone, 7

- Assets for meeting financial support requirements, 37, 42, 43–44, 64, 240
- Asylees and refugees
 - applying for citizenship, 297
 - criminal records of, 168–169
 - difference between, 168
 - entering and living in U.S. without a visa, 22, 45
 - green cards for, 170
 - overview, 9, 14–15
 - qualifying as, 167–169
 - Refugee Act (1980), 9, 167
 - spouse and children of, 175–176, 192–193
 - See also* Asylum; Refugees
- Asylum
 - applying for, 170–174
 - denial of application, 174–175
 - green card application, 176
 - overview, 167
 - revocation of status, 176
 - sample of form, 180–191
 - spouse and children of asylee, 175–176, 192–193
 - See also* Asylees and refugees
- Attorneys. *See* Experts, consulting with

B

- Bar association for reporting bad attorneys, 310
- Beneficiaries
 - derivative beneficiaries, 42, 90, 198
 - letters to USCIS on behalf of, 288–290
 - overview, 84
 - petitioner's criminal record and, 81, 104, 112, 132
 - See also* Immigrants; Preference categories
- BHRHA (Bureau of Human Rights and Humanitarian Affairs), 173–174
- BIA (Board of Immigration Appeals), 175
- Biographic information. *See* Form G-325A
- Biometrics fee, 91. *See also* Fingerprinting
- Board of Immigration Appeals (BIA), 175
- Bona fide marriage, 80, 89, 229
- Border guards
 - items that will create problems with, 25

- reasons for turning you back, 44, 65
- requesting political asylum from, 170, 171
- Brothers and sisters of a permanent resident, 13
- Brothers and sisters of a U.S. citizen
 - age of petitioner, 52
 - definition of, 158–159
 - overview, 158
 - preference categories, 12, 52, 105
 - and their families, 56
- Bureaucracy of immigration
 - delays from, 50, 288–290
 - DHS organization, 287–288
 - emergencies, requesting special attention for, 290
 - USCIS culture, 286, 290
 - See also* USCIS
- Bureau of Human Rights and Humanitarian Affairs (BHRHA), 173–174

C

- Cancellation of removal
 - for abused spouse or child, 215–216
 - approval of application, 215
 - filing and hearing for, 214–215
 - immigrants barred from, 210–211
 - for old-timers, 207
 - overview, 210
 - for permanent residents with deportable status, 215
 - preparing your case, 211–214
 - qualifications for, 210
- CBP (Customs and Border Protection), 10
- Census (1790), 6
- Certificate of citizenship, 119, 123–129, 271
- Certificate of good conduct, 211
- Certificate of naturalization, 279
- Child Citizenship Act (2000), 137
- Children
 - of asylee, 175–176
 - crimes against, 81, 104
 - definition of, 113–116
 - of diversity lottery winners, 146–147
 - exception to affidavit of support for, 42, 224, 241
 - of military veterans, 197
 - as proof of hardship, 212–213
- Children as immigrants
 - adopted children, 114–116, 119
 - as derivative beneficiaries, 90
 - eligibility, 112–113
 - and fiancé visa, 66
 - green card acquisition, 90
 - illegally living in U.S., 115–116
 - legitimated children, 114
 - living in the U.S., 119
 - living overseas, 119, 123–129
 - marital status of parents, 113–114
 - and marriage-based visa, 89–90
 - marriage or turning 21 years old, 112, 117–118
 - separate forms for, 65
 - stepchildren, 114
 - strategies for, 105
 - See also* Orphan immigrants
- Children of a permanent resident, married, 54, 57, 112
- Children of a permanent resident, unmarried, over 21 years old, 112
- Children of a permanent resident, unmarried, under 21 years old
 - consequences of marriage, 54, 90, 241
 - consequences of turning 21 years old, 56
 - eligibility for green card, 112
 - overview, 12–13
 - preference category for, 51, 56, 58
 - visa petition for, 90, 117, 118
- Children of a U.S. citizen
 - married or over 21 years old, 51–52, 56, 117–118, 241
 - unmarried, over 21 years old, 51, 57
 - unmarried, under 21 years old, 51, 117, 119
- Child Status Protection Act (2002), 57, 118
- Chinese Exclusion Act (1882), 7
- Citations, interpreting, 8
- Citizenship
 - acquisition of, 268–271
 - for alien military with green card, 198–199
 - application for, 196, 199

- applying for, 297–298
- certificate of citizenship, 119, 123–129, 271
- date for eligibility of permanent residents, 88, 294
- dual, 271
- green cards vs., 2, 294
- green card vs., 2
- for military vets and enlistees, 196–197, 198–199
- U.S. citizen's proof of, 62
- Civil penalties for false answers, 274
- Coercive population control programs, 167
- Conditional status green cards, 67, 90–92
- Congress, private bill passage, 266
- Consular interviews
 - for fiancé and his children, 63–65, 66
 - overview, 241, 243
 - for U.S. citizen's spouse, 82
 - See also* U.S. consulate
- Consular processing
 - adjustment of status vs., 218, 238
 - affidavit of support, 240, 250–258
 - approval of visa, 243–244
 - arriving in the U.S., 244
 - choosing address and agent, 239, 245
 - contract between sponsor and household member, 224, 259–261
 - forms and documents, list of, 239–241
 - overview, 238–239
 - samples of forms, 245–263
 - sworn statement, 240, 262–263
- Consultation fees, 307
- Consulting an expert. *See* Experts, consulting with
- Continuous physical presence, definition of, 211
- Copies of documents, statement for, 276–278
- Countries exempted from visas for 90-day visits, 21
- Credit history, 213
- Criminal penalties for false answers, 274
- Criminal records
 - of diversity visa lottery winners, 145
 - and fiancé visa application, 61, 62
 - of immigrants requesting cancellation of removal, 211
 - inadmissible status and waivers, 34, 35–36, 40–41, 46

- of petitioners, 81, 104, 112, 132
- of refugees or asylees, 168–169
- of TPS applicants, 178
- Customs. *See* Border guards
- Customs and Border Protection (CBP), 10

D

- Declaration of Independence, 10
- Deferred Enforced Departure (DED), 179
- Delayed decision, 289
- Department of Homeland Security (DHS), 9–10, 287–288. *See also* USCIS
- Department of State (DOS)
 - documents finder, 276
 - inquiring about delays, 288–290
 - Visa Bulletin from, 53–54
 - See also* Diversity visa lottery
- Derivative beneficiaries, 42, 90, 198
- Detention Section of DHS, 287
- DHS (Department of Homeland Security), 9–10, 287–288. *See also* USCIS
- Discrimination within USCIS, 286, 287–288, 291
- Displaced Persons Act (1948), 8
- District office of USCIS, 287
- Diversity visa lottery
 - applying for, 144–145
 - bringing spouse and children, 146–147
 - overview, 2, 15, 142
 - qualifying for, 143–144
 - winner's green card application, 145–146
- Divorce
 - effect on preference category, 51, 54, 56
 - fraudulent, 56
 - holding marriage-based visa, 92–93
 - proof of, 62, 64
 - as requirement for legal marriage, 61
 - revocation of petition for, 58
- Documentation
 - of bona fide marriage, 80, 89, 229
 - copying everything, 276–278, 280, 281
 - of fiancé visa petition, 63

- of filing fees/priority date, 53
- of inquiry letters, 290
- of preference category changes, 57
- of right to reside in U.S., 92
- of termination of previous marriage, 64
- See also* Proof

Documents

- for adjustment of status, 227–228
- for adopting an orphan child, 135, 136
- for Amerasian immigrants, 151–152
- for brother's or sister's visa petition, 158–160
- for cancellation of removal, 214
- for child's visa petition, 116–117
- for consular processing, 239–241
- copying everything, 276–278, 280, 281
- for explaining extended absence from U.S., 296
- for fiancé visa petition, 62–63
- for immigrant's consular interview, 64
- for marriage-based visa petition, 84–85
- official vs. copies or sworn statement, 276–278
- for parents' visa petition, 107–108
- for proving continuous residence in U.S., 105, 206–207, 212
- for refugee visa petition, 168–169
- for registry, 207
- for removal of conditions on green card, 91
- for renewing or replacing green card, 294
- for spouse or children of refugee or asylee, 175–176
- for TPS applications, 178
- translation of, 173, 278
- See also* Letters; Letters as support documents; Proof; *entries beginning with* “Form”
- Document violations, inadmissibility due to, 39
- Domestic violence, 46, 215–216
- DOS. *See* Department of State
- Draft evasion and inadmissibility, 40
- Drug abusers or addicts, inadmissible status of, 35, 36, 46
- Dual citizenship, 271

E

- EAD (Employment Authorization Document), 172, 223. *See also* Form I-765; Work permit
- Economic grounds
 - for decision on cancellation of removal request, 213
 - for inadmissibility, 37, 41–44
 - See also* Financial support requirements
- Educational requirements for lottery, 143–144
- E-filing, 283
- El Salvadoran immigrants, 9
- Emergencies, requesting special attention for, 290
- Employment Authorization Document (EAD), 172, 223. *See also* Form I-765; Work permit
- Employment-based visas or green cards, 2, 13–14, 37, 52
- Entrepreneur immigrants, 14
- Experts, consulting with
 - for Affidavit of Support issues, 44
 - for amnesty information, 15
 - before cancellation of removal process, 210
 - for delayed decisions, 290
 - for denial of adjustment of status application, 229
 - for diversity visa lottery winners, 146
 - for employment-based relationships, 13
 - finding a lawyer, 306–308
 - for medical graduates, 206
 - reasons for hiring, 2–3
 - for refugee or political asylum status, 167
 - for special immigrant status, 14

F

- False answers, consequences of, 274
- Family-based green cards
 - affidavit of support form for, 240–241
 - and children immigrants, 105
 - financial support guarantees, 41–44
 - overview, 2, 12–13
 - preference categories, 51–52
 - proving family relationship, 105–106, 276–278
 - waiting times, 52–54
 - See also* Form I-130

Father-child relationship, proving, 105–106

Fathers of Amerasian children, 151

Federal Poverty Guidelines, 42, 43

Federal Register, 177

Fees. *See* Filing fees

Fees of lawyers, 308

Fiancé or fiancée of a U.S. citizen

adjustment of status, 225

availability of green card, 12

See also Fiancé or fiancée visas

Fiancé or fiancée visas

availability of green card, 12

extension of time for, 66

and fiancé's children, 66

medical exam, 63, 64, 65

as nonimmigrant visa, 65

qualifying for, 60–61

for U.S. citizen's spouse living overseas, 65, 82

See also Form I-129F

Filing fees

for adjustment of status, 82, 225

for alien veteran applying for citizenship, 198

application for replacement of arrival/departure record, 23

for application for visa extension, 23

for cancellation of removal, 214

for changing orphan adoption petition, 136

confirming amount of before mailing, 275

for consular interview, 64

for diversity lottery winners, 146

documentation of, 53

for fiancé visa petition, 63

for fingerprinting, 280, 281

none, for Amerasians, 151

none, for diversity visa lottery application, 144

none, for refugee/asylee relative petition, 175

none, for veterans directly qualifying for citizenship, 196

for orphan adoption, 135, 136

for petition to upgrade conditional green cards, 91

for premium processing service, 283

submitting individual checks for, 284

for TPS applications, 178

USCIS' failure to return duplicate payments, 283

verifying current amount of, 274–275

for visa petition, 85, 107, 117

for waiving inadmissibility findings, 41

Filipino immigrants, 7, 52, 53

Financial support requirements

for Amerasian sponsors, 151–152

exemptions, 42, 224, 241

for family-based green cards, 41–44

U.S. citizen's assets for meeting, 37, 42, 43–44, 64

See also Economic grounds; Form I-134; Form I-864

Fingerprinting

for adjustment of status, 227

of adoptive parents, 135

of alien enlistees, 198

appointment notice, 82

for cancellation of removal, 214

for consular processing, 241

overview, 280–281

for political asylum, 173

for TPS applicants, 178

Firmly resettled, definition of, 169

Fiscal year, 53

Form AR-11, Alien's Change of Address Card, 244, 283, 295

Form DS-156, Nonimmigrant Visa Application, 63, 76–77

Form DS-156K, Nonimmigrant Fiancé(e) Visa Application, 63, 78

Form DS-230 Part I, Application for Immigrant Visa and Alien Registration, 63, 74–75, 240, 248–249

Form DS-230 Part II—Sworn Statement, Application for Immigrant Visa and Alien Registration, 64, 240, 262–263

Form DS-2001, Notification of Applicant(s) Readiness, 240, 246–247

Form DS-3032, Choice of Address and Agent, 239, 245

Form EOIR-42A, Application for Cancellation of Removal for Permanent Residents, 214

Form EOIR-42B, Application for Cancellation of Removal and Adjustment of Status for Certain Nonpermanent Residents, 214

- Form FS-240, Report of Birth Abroad of a Citizen of the United States, 279
- Form G-325A, Biographic Information
- for adjustment of status, 224
 - for cancellation of removal, 214
 - for child's visa petition, 117, 122
 - for fiancé visa petition, 62
 - for marriage-based visa petition, 84
 - for military veterans or enlistees, 196, 198, 199
 - for refugee application, 169
 - sample of form, 101, 122
- Form G-639, Freedom of Information/Privacy Act Request, 284
- Form I-94, Arrival/Departure Record
- for adjustment of status, 220, 223
 - and asylum application, 171
 - as bottom half of I-94W, 21
 - and cancellation of removal, 212
 - child staying legal vs. overstaying, 115–116
 - employment authorization stamp on, 244
 - and extending a visitor visa, 23
 - with fiancé visa, 65
 - missing or destroyed, 23–24
 - for registry, 207
 - sample of form, application for extension, 28–31
 - sample of form, application for replacement, 26–27
 - staying legal vs. overstaying, 22, 88, 108
 - and TPS application, 178
- Form I-94W, Arrival/Departure Record, 21
- Form I-95, Crewman's Landing Permit, 23
- Form I-102, Application for Replacement/Initial Nonimmigrant Arrival-Departure Document, 23, 26–27
- Form I-129F, Petition for Alien Fiancé(e)
- consular interview, 63–65, 66
 - filing fee, 63
 - filling out the application, 62–65
 - forms for children, 66
 - fulfilling meeting requirement, 60–61, 62, 71
 - for immediate-relative children, 89–90
 - married couples filing, 65
 - overview, 61, 85, 96–98
 - and petitioner's criminal history, 61
 - proving intent to marry, 60, 63
 - sample of form, 68–70, 96–98
- Form I-130, Petition for Alien Relatives
- for adjustment of status, 223
 - adjustment of status with, 222–223
 - age of children and preference category, 57
 - for children, 116–121
 - children as immigrants, 116–118
 - death of petitioner, 58, 87
 - documents for, 84–85
 - family members filing multiple petitions, 158
 - for immediate-relative children, 89–90
 - inquiring about delays, 288–290
 - for marriage-based green card, 81–87
 - overview, 85–86
 - parents as immigrants, 107–108, 109–110
 - and preference category changes, 54–55, 57
 - revocation of, 57–58
 - samples of form, 94–95, 120–122, 162–163
 - for U.S. citizen's brother or sister, 159–163
 - See also* Preference categories
- Form I-131, Application for Travel Document
- during adjustment of status process, 227
 - applying for advance parole in, 303
 - for permanent resident card holders, 295
 - sample of form, 301–303
 - for travel by political asylee, 174
- Form I-134, Affidavit of Support
- for adjustment of status, 224
 - bill for processing, 239
 - for extending a visitor visa, 23
- Form I-864 compared to, 42
- for refugee status, 169
 - sample of form, 72–73
 - supporting documents, 64
- Form I-151, Alien Registration Receipt Card, 294
- Form I-360, Petition for Amerasian, Widow(er), or Special Immigrant
- for adjustment of status, 226
 - for Amerasians, 151, 153–156
 - for military vets and enlistees, 197, 198, 200–203
 - samples of form, 153–156, 200–203

Form I-361, Affidavit of Financial Support and Intent to Petition for Legal Custody for Public Law 97-359 Amerasian, 151–152

Form I-485, Application to Register Permanent Residence or Adjust Status, 225

for adjustment of status, 86, 223

for registry, 206

sample of form, 231–234

Form I-539, Application to Change/Extend Nonimmigrant Status, 23–24, 25, 28–31

Form I-551, Alien Registration Receipt Card, 279, 294. *See also* Green cards

Form I-551, Permanent Resident Card, 279, 294. *See also* Green cards

Form I-589, Application for Asylum and for Withholding of Removal, 171–173, 180–191

Form I-590, Registration for Classification as Refugee, 169

Form I-600, Petition to Classify Orphan as an Immediate Relative, 136

Form I-600A, Application for Advance Processing of Orphan Petition, 135–136, 137–138

Form I-601, Application for Waiver of Grounds of Inadmissibility, 41

Form I-693, Medical Examination of Aliens Seeking Adjustment of Status, 225

Form I-730, Refugee/Asylee Relative Petition, 175–176, 192–193

Form I-751, Petition to Remove Conditions on Residence, 91–92, 99–100

Form I-765, Application for Employment Authorization

for adjustment of status, 223

for asylees, 172

for cancellation of removal, 214

for fiancé with K-1 visa, 65

sample of form, 235

for TPS immigrants, 178

See also Work permit

Form I-797, Notice of Action, 63, 87, 227

Form I-797C, Notice of Action, 223, 230, 282

Form I-821, Application for Temporary Protected Status, 178

Form I-824, Application for Action on an Approved Application or Petition

for alien enlistee's spouse and children, 198

for orphan immigrants, 136

for replacement approval documents, 278

Form I-864A, Contract Between Sponsor and Household Member, 42–43, 224, 259–261

Form I-864 or I-864-EZ, Affidavit of Support

for consular processing, 240

countering inadmissibility with, 37, 41–44, 224

Form I-134 compared to, 42

sample of, 250–257

supporting documents, 224, 227–228

Form I-864P (Poverty Guidelines), 258

Form I-864W, Affidavit of Support Exemption, 42, 224, 241

Form I-907, Request for Premium Processing Service, 283

Form N-400, Application for Naturalization, 196, 199

Form N-426, Request for Certification of Military or Naval Service, 196, 198, 199

Form N-600 or N-600K, Certificate of Citizenship Application, 119, 123–129, 271

Forms

filling out, 275–276

obtaining, 3, 4, 239, 274–275

Fraud

consequences of, 57–58

failure to mention approved petition when visiting U.S., 161

failure to reveal intent of visit as, 24, 61, 108, 219–220, 221

marriage only for green card, 80

Fraudulent marriages, 80

G

Gay couples and orphan adoption, 134

Good moral character, proving, 211

Green card interview, 89

Green cards (permanent resident cards)
 address changes while holding, 228, 244, 295
 citizenship vs., 2, 294
 conditional status, 67, 90–92
 intent to settle in U.S., 104
 limitations of, 4
 overview, 2, 12–15
 permanent bar, 45
 renewing or replacing, 294, 299–300
 reporting change of address, 228, 244, 295
 sample of form, renewing or replacing, 299–300
 visas compared to, 50

H

Half-brother and half-sister, 158–159
 Hardship, proving, 212–214
 Hardship waivers
 for illegal presence in U.S., 39, 45, 46, 89
 for lies during immigration process, 38
 for not meeting fiancé prior to application, 60, 61
 Hauge Convention on the Protection of Children
 (HCIA), 105
 Health insurance for parent immigrants, 104
 Health problems, inadmissible status and waivers for,
 35, 46
 Hearings. *See* Immigration Court hearings
 Home study reports for adopting orphans, 135
 Homosexual couples and orphan adoption, 134
 Humanitarian parole, 136

I

ICE (Immigration and Customs Enforcement), 10,
 287
 Illegal aliens living in the U.S.
 amnesty for, 15
 children, 115–116
 complications from, 83, 104
 laws against hiring, 9
 overview, 18, 46
 permanent bar against, 45

 smugglers of, 39
 visa expiration leading to, 24
 Illegal entry into the U.S.
 consequences of, 22, 83, 108, 222
 inadmissibility status resulting from, 38–39, 44–45
 Illegal Immigration Reform and Immigrant
 Responsibility Act (IIRIRA—1996), 9, 41
 “Illegitimate” children of U.S. citizen father, 268–271
 Immediate relatives
 Amerasians as, 152
 illegal entry of, 218, 219, 222
 orphan children as, 136
 parents of U.S. citizen as, 104–107
 of permanent resident, 52
 of permanent resident spouse of a U.S. citizen, 88,
 89–90
 of U.S. citizens, 50, 51, 54–57, 80, 87, 112, 117,
 219–220
 Immigrants
 adapting to a new country, 108
 Amerasians, 150–156
 children of, 64
 Deferred Enforced Departure of, 179
 entrepreneur status, 14
 Filipino, 52, 53
 Mexican, 51–53
 military veterans and enlistees, 196–199
 special status, 14
 Temporary Protected Status for, 176–179
 in U.S. since 1972, legally or illegally, 206–207
 See also Asylees and refugees; Children as
 immigrants; Diversity visa lottery; Orphan
 immigrants
 Immigrant Visa and Alien Registration document,
 244
 Immigration, 6–8. *See also* Bureaucracy of
 immigration; USCIS
 Immigration Act (1917), 7
 Immigration Act (1924), 7
 Immigration Act (1990), 9
 Immigration and Customs Enforcement (ICE), 10,
 287
 Immigration and Nationality Act (1952), 8

Immigration and Naturalization Service, 9–10, 278.

See also Department of Homeland Security; USCIS

Immigration case number, 283–284

Immigration Court

for cancellation of removal, 210, 214–215

and DHS, 288

for failure to maintain a residence in U.S., 296–297

marriage after start of proceedings, 81

Immigration Court hearings

for cancellation of removal request, 210, 214–215

consequences of failure to appear, 174–175

requesting asylum at, 170

Immigration laws

current, 8–10

on fiancé visas, 62–63

history through 1950s, 6–8

online access to, 8

Immigration Marriage Fraud Amendments (1986),

80

Immigration Reform and Control Act (1986), 9, 15

Immigration reform law (1996), 9, 41

Inadmissible status

advisability of obtaining a visa in case of, 22

for criminal violations, 34, 35–36, 40–41, 46

economic grounds for, 37, 41–44

exclusion at the border, 44

of green card holders returning to the U.S., 297

overview, 34

proving finding is incorrect, 41

reversal or waiver of, 34, 40–41

summary of grounds and waivers, 35–40

and sworn statement form, 64

for unlawful presence in U.S., 44–46

InfoPass appointment, 92, 286

INS, 9–10, 278. *See also* Department of Homeland Security; USCIS

“In status,” 88

International Marriage Brokers Regulation Act

(IMBRA—2005), 61

International organization employees, 14

Interpreters, 173, 228, 243

Interview appointment notice, 230

Interviews

for adjustment of status, 227–229

appointment notice, 230

of lawyers by prospective clients, 307–308

of mail order brides, 61

of petitioner, by USCIS officer, 61, 63

of political asylees, 173

of refugees, 170

tips for, 229, 243

See also Consular interviews

Investment green cards, 2

Iraqi translators, 197

Iraq War (War on Terror), 196

J

Japanese immigrants, 7

Jefferson, Thomas, 10

Job letter from employer, 224–225, 240

Joint sponsors, 42

K

K-1 visa and K-2 visa, 65

K-3 visa. *See* Fiancé or fiancée visas

Korean War, veterans of, 196

L

Labor certifications, requirements for admissibility, 37

Lawful permanent residents. *See* Permanent residents

Laws governing USCIS, 286. *See also specific acts passed by Congress*

Lawyers

fees of, 308

finding, 306–308

firing, 310

managing, 308–309

See also Experts, consulting with

Legal entry into the U.S.

- extending your visit, 23–24, 66, 116
- and Form I-539, 25, 28, 29
- maintaining legality of your visa, 22, 24, 44

Legitimate brother and sister, 158

Legitimated children, 114, 268

Lesbian couples and orphan adoption, 134

Letters

- complaint against USCIS official, 291
- to congressional representative, 58
- for converting conditional green card, 91
- for converting fiancé visa, 85, 87
- courteous, clear, and direct, 289
- cover letters for petitions, 107–108, 117, 271
- for extension of time for finding an orphan to adopt, 135
- inquiring about delayed decision, 289
- no receipt notice, 289
- preference category upgrade request, 54–57
- requesting change of country orphan child will be from, 136
- to USCIS, 283, 284

Letters as support documents

- advising of name changes, 275
- employment verification, 64, 213, 224–225, 240
- for extending a visitor visa, 23
- in lieu of meeting your fiancé, 61
- as proof of father-child relationship, 114, 151
- proof of good standing in community, 214
- as proof of intent to marry, 62, 63
- for proof of residence, 207
- for proving the illness of a relative, 213
- from real estate broker on your real property in the U.S., 213

Letters of recommendation, 197, 207

Litigation Section of DHS, 288

Lottery. *See* Diversity visa lottery

M

Mail, submitting applications via, 281, 283

Mail order brides, 61

Marriage

- bona fide legal status, 80, 89, 229
- less than two years old, 90
- penalties for intent to immigrant through, 80
- proving validity of, 81, 89, 229

Marriage-based green cards

- adjustment of status interview, 227–228
- overview, 81–83
- removing conditions on residence, 91, 92, 99–100
- spouses of permanent residents, 88–89
- two-year time limit for, 67, 90
- visa petition for alien relative, 84–86
- visa petition for fiancé, 85, 86–87, 96–98
- waiting game, 87–88
- See also* Spouse of a permanent resident; Spouse of a U.S. citizen

Marriage brokers, 61

Married parents, children of, 113

Medical doctors, 14, 206

Medical exam

- for aliens seeking adjustment of status, 225
- for consular processing, 241
- for fiancé's children, 66
- for fiancé visa, 63, 64, 65
- for refugee application, 170

Mental illness, inadmissible status and waivers for, 35

Mexican immigrants, 51–53

Military veterans and enlistees

- citizenship without a green card, 196–197
- filing for permanent residence and citizenship, 198–199
- green card availability, 197
- overview, 196

Millionaire immigrants, 14

Moral character, proving, 211

Moral turpitude, 40

N

NACARA program, 2, 15

Name changes, 106

Name of immigrant, 275
 National Benefits Center (NBC), 287
 National Origins Act (1924), 7–8
 National security violations, inadmissible status and waivers for, 36
 National Visa Center (NVC), 63, 238–240, 287
 Naturalization of legal resident petitioner, 56
 Naturalization Section of DHS, 287
 Natural parents, 105–106, 107
 NBC (National Benefits Center), 287
 None vs. not applicable (N/A), 275
 Nonimmigrant visas
 application to change or extend, 23–24, 25, 28–31
 changing to permanent resident status, 218
 classifications of, 19–20
 denial due to pending immigrant visas, 52
 effect of immigrant applications, 52
 fiancé visa as, 65
 forms for, 63, 76–78
 overview, 18–19, 85
 sample, application forms, 76–78
 waiting period or denial of, 37, 41, 44–45
 See also Fiancé or fiancée visas
 Not applicable (N/A) vs. none, 275
 Notice to Appear, 210
 NVC (National Visa Center), 63, 238–240, 287

O

Official documents, 276–278, 281
 Old-timers in U.S. since 1972, legally or illegally, 206–207
 Online applications for diversity visa lottery, 144
 Original documents, 276–278, 281
 Orphan immigrants
 adoption by homosexual couples, 134
 adoption process, 135–137
 citizenship for, 137
 definition of, 132–133
 petitioner for, 133
 pre-adoption requirements, 133–134
 sample of advance processing form, 138–139

visa petition, 137
See also Adopted children

P

Panama Canal Zone former employees, 14
 Parents, definition of, 105–107
 Parents as immigrants
 adoptive parents, 107
 natural parents, 105–106, 107
 overview, 104–105
 preference category, 51
 stepparents, 106
 visa petition, 107–108, 109–110
 Parents as petitioners, 66, 90. *See also* Children as immigrants
 Parole process or parole visas
 with adjustment of status, 227
 emergencies and, 290
 employment authorization with, 235
 for Hungarian immigrants, 8
 for orphan children with emergency conditions, 136
 for refugees and asylees, 170, 178
 submitting application, 281–282
 Parole visa, 290
 Passports
 born overseas to U.S. citizen parents, 271
 for children with automatic U.S. citizenship, 119
 for consular interview, 64
 inadmissibility due to lack of, 39
 reporting to police if stolen, 24
 Penalties for false answers, 274
 Penalty fee for adjustment of status under law 245(i), 221–222
 Permanent residency, proving, 105, 206–207, 212
 Permanent residents
 address changes of, 228, 244, 295
 children over 21 years old, 57
 date for citizenship eligibility, 88, 294
 derivative beneficiaries of, 90
 effect of naturalization on pending visa petitions, 54–55, 56

- inadmissible on return to U.S., 34
 - marriage to, 80
 - reentry permit, 295–296
 - relatives of, 12–13
 - spouse and children of military veterans, 197
 - See also* Children of a permanent resident; Spouse of a permanent resident
 - Persecution, 167, 168
 - Persian Gulf Conflict, veterans of, 196
 - Petitioner
 - for adopted child, 115
 - for adopted or stepbrother or stepsister, 159
 - as agent of choice, 239
 - age of, 51, 56, 104
 - at beneficiary interviews, 227–228, 243
 - criminal record of, 81, 104, 112, 132
 - death of, 58, 87
 - delay inquiry letters to USCIS, 288–290
 - naturalization of, 54–55, 56
 - overview, 84
 - parents as, 66, 90
 - USCIS interview, 63
 - Petitions. *See* Applications, filling out and submitting
 - Photocopies of documents, 276–278, 280, 281
 - Photographs for identification, 279–280
 - Political asylum. *See* Asylum
 - Polygamists, inadmissibility of, 40
 - Poverty Guidelines, federal, 42, 43
 - Preconceived intent, 24
 - Preference categories
 - for children of immigrants, 105
 - for family-based relationships, 12–15
 - overview, 8–9, 51–52
 - priority date, 52–53
 - quotas for, 50–51
 - switching your category, 54, 56–57
 - upgrading your category, 54–57
 - visa cutoff dates, 53–54
 - waiting periods, 14, 51–57, 88, 112, 222–223
 - Premium processing service, 283
 - Priority date, 52–53, 56, 147, 152, 170
 - Private bills, 266
 - Processing fees, 239
 - Proof
 - for acquisition of citizenship, 270–271
 - of bona fide marriage, 80, 89, 229
 - of continuous residence in U.S., 105, 206–207, 212
 - of family relationships, 276–278
 - of father-child relationship, 105–106
 - of good moral character, 211
 - of incorrect inadmissible status finding, 41
 - of INS or USCIS approval, 278
 - of intent to marry, 60, 63
 - of permanent residence, 279
 - of U.S. citizenship, 278–279
 - of your value to the U.S., 212–214
 - See also* Documents
 - Proof of hardship, 212–214
 - Psychological reasons for cancellation of removal request, 214
- ## Q
- Quotas, 50–51
- ## R
- Racism in the U.S., 6, 7–8, 286, 287–288, 291
 - REAL ID Act (2005), 168
 - Receipt notice, 282, 288, 289
 - Reentry permits, 295–296
 - Refugee Act (1980), 9, 167
 - Refugee Relief Act (1953), 8
 - Refugees
 - applying for refugee status, 169–170
 - entering and living in U.S. without a visa, 22, 45
 - green card applications, 170
 - overview, 167
 - spouse and children of, 175–176, 192–193
 - See also* Asylees and refugees
 - Regional Service Center of USCIS, 287
 - Registry, 2, 206–207
 - Religious workers, 14
 - Removability, grounds for, 297
 - Removal proceedings, 3, 297

Replacing documents

- affidavits for, 24
- approval of application, 278
- arrival/departure record, 26–27
- green card, 294, 299–300

Request for upgrade, 54–55

Reversal or waiver of inadmissible status, 34–41

Rudeness of USCIS official, 286, 287–288, 291

S

Secondary evidence of family relationships, 277–278

Security checks, 65, 145, 169, 197, 227. *See also*

Fingerprinting

September 11, 2001, terrorist attacks, 9–10

Siblings. *See* Brothers and sistersSisters. *See* Brothers and sisters

Skilled workers, preference for, 8, 9

Social Security number, 276

Sociocultural reasons for cancellation of removal request, 214

Special immigrants, 14

Spelling errors on diversity visa application, 145

Sponsors

- for Amerasian immigrants, 150–151
- job letter, 224–225
- joint sponsors, 42
- substitute sponsors, 58
- See also* Affidavit of support

Spouse

- of asylee, 175–176
- green card application, 84–88
- interview tips for, 229
- of a military veteran, 197
- See also* Marriage; Marriage-based green cards

Spouse of a permanent resident

- availability of green card, 12–13, 80
- divorce and remarriage of, 92–93
- limit on green cards per year, 50
- living in the U.S., 82–83
- living overseas, 82
- overview, 88–89

preference category for, 52

waiting period and staying legal, 88–89

Spouse of a U.S. citizen

- availability of green card, 12, 51, 80
- children of, qualifying as “immediate relatives,” 89–90

fiancé visa for, 52, 65, 96–98

living in the U.S., 83

living overseas, 81–82

preference category for, 51, 56

widow or widower green card applications, 12, 51

State Department. *See* Department of State

Stepchildren, 114

Stepparents, 106

Student and prospective student visas, 24

Substitute sponsors, 58

Sworn statement with Form DS-230, Part II, 64, 240, 262–263. *See also* Affidavits**T**

Temporary Protected Status (TPS), 176–179

Temporary treatment (TT), 177

Temporary visas, 2, 14

Terrorism, effect on immigration, 9–10

Terrorists, inadmissible status of, 36, 47

Tourist visas, 24, 60–61

TPS-designated countries, 178

TPS (Temporary Protected Status), 176–179

Translation of documents, 173, 278

Travel

- adjustment of status process and, 227
- adjustment of status vs. consular processing, 218
- for adopting orphans, 136
- asylum status and, 174
- with conditional green card and pending permanent status, 92
- and maintaining residency, 105
- as permanent resident vs. U.S. citizen, 294
- See also* Form I-131

TT (temporary treatment), 177

U

- U.N. Convention Against Torture, 174
- Undocumented aliens. *See* Illegal aliens living in the U.S.; Illegal entry into the U.S.
- United States
 - immigration history through 1950s, 6–8
 - proving acquisition of citizenship, 270–271
 - proving citizenship, 278–279
 - proving continuous residence in, 206–207, 212, 225
 - proving your value to, 212–214
- Unmarried parents, children of, 113–114
- Updates to fees and forms, 4
- Upgrade request, 54–55
- U.S. citizens
 - assets for meeting financial support requirements, 37, 42, 43–44, 64
 - death of petitioner, 58, 87
 - inadmissibility of, 40
 - marriage to, 80
 - overview, 60, 104
 - proof of citizenship, 62
 - See also* Children of a U.S. citizen; Spouse of a U.S. citizen
- U.S. Citizenship and Immigration Services. *See* USCIS
- U.S. consulate
 - certificate of consular registration of birth, 271
 - inquiring about delays, 288–290
 - investigating orphans pre-adoption, 137
 - notifying of readiness, 240, 246–247
 - USCIS notification of visa petition approval, 63
 - See also* Consular interview; Consular processing
- USA Patriot Act (2002), 9
- USCIS (U.S. Citizenship and Immigration Services)
 - application for extension of visa, 23
 - application processing times, 52
 - approval and denial handling policy, 53
 - charter of, 9–10
 - culture of, 286
 - and fiancé visa petition process, 61

- Immigration Forms, Fees, and Fingerprints section of website, 4
- InfoPass appointment, 92
- military veterans help line, 197
- office types and locations, 287
- “reasonable grounds to believe” guilt of terrorist suspects, 46
- reporting official’s wrongdoing, 291
- revocation of petitions, 57–58

V

- Vaccination requirements for visas, 35
- Vietnam War, veterans of, 196
- Violence Against Women Act (VAWA), 216
- Visa Bulletin, 53–54
- Visa lottery. *See* Diversity visa lottery
- Visa number, 50
- Visa petition interviews, 63
- Visas
 - for adjustment of status, 223
 - changing reason for staying, 24
 - diversity visa lottery, 2, 15, 142–147
 - extending your visit, 23–24, 66, 116
 - green cards compared to, 50
 - inadmissibility due to lack of, 39
 - K-1 and K-2, 65
 - maintaining legality, 22, 24
 - for orphan immigrants, 132, 137
 - overview, 18
 - temporary, 2, 14
 - See also* Nonimmigrant visas
- Visa Waiver Program, 21–22

W

- Waiting periods, 14, 51–57, 112, 222–223
- Waiver of inadmissibility, 34
- Waiver of removal, 215
- War Brides Act (1945), 8
- War on Terror, veterans of, 196

Wedding plans, 60

Widow or widower green card applications, 12, 51,
58

Work permit

applying for, 172

for asylees, 174, 176

consequences of working without, 220–221

Employment Authorization Document, 172, 223

for refugees, 170

TPS immigrants, 177

and visa petition status, 52

See also Form I-765

World Wars I and II, veterans of, 196 ●

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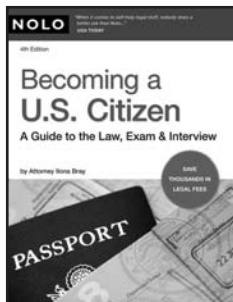


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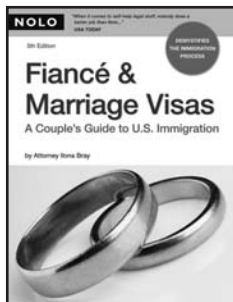
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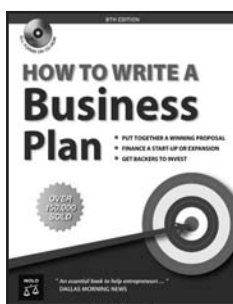
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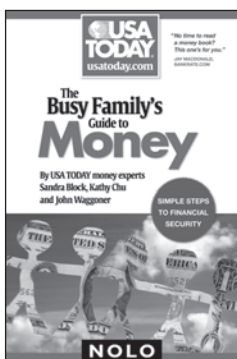
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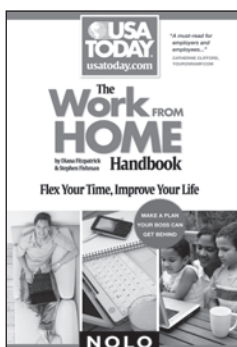
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About the Authors

Ilona Bray came to the practice of immigration law through her long interest in international human rights issues. Before joining Nolo as legal editor in charge of immigration, she ran a solo law practice and worked for nonprofit immigration agencies including the International Institute of the East Bay (Oakland) and the Northwest Immigrant Rights Project (Seattle). Ms. Bray was also an intern in the legal office at Amnesty International's International Secretariat in London. She received her Bachelor's degree in philosophy from Bryn Mawr College, and her law degree and a Master's degree in East Asian (Chinese) Studies from the University of Washington. Ms. Bray is a member of the American Immigration Lawyer's Association (AILA). She has authored other books for Nolo, including *Fiancé & Marriage Visas: A Couple's Guide to U.S. Immigration* and *Becoming a U.S. Citizen: A Guide to the Law, Exam, & Interview*.

Loida Nicolas Lewis is a former INS attorney with over 15 years experience handling U.S. immigration matters. She practiced law in both New York and the Philippines.

